

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.992/Ahd/2025
Assessment Year: 2016-17**

Gujarat State Petronet Limited Wing “A”, Plot No.E-18, GSPL Bhavan, GIDC Electronics Estate, Nr. K-7, Circle, Sector – 26, Gandhinagar – 382 028. (Gujarat) [PAN – AABCG 1812 E] (Appellant)	Vs.	Deputy Commissioner of Income Tax, Gandhinagar Circle, Block No.14, Room No.405, 4 th Floor, Udhog Bhavan, Sector – 11, Gandhinagar – 382 028. (Gujarat) (Respondent)
Assessee by	Shri S. N. Soparkar, Sr. Advocate	
Revenue by	Shri Alpesh Parmar, CIT-DR	
Date of Hearing	02.09.2025	
Date of Pronouncement	07.10.2025	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi (in short “the CIT(A)”) dated 03.03.2025 for the Assessment Year (A.Y.) 2016-17 in the proceedings under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The brief facts of the case are that the assessee had filed its return of income for the A.Y. 2016-17 on 23.09.2016 declaring income of Rs.566,18,41,840/-. The case was selected for scrutiny under CASS. The

assessee is a Government company engaged in the business of laying and operating of cross-country pipelines for transportation of natural gas. In the course of assessment, the Assessing Officer found that the assessee had earned tax free income, in respect of which disallowance of Rs.20,72,918/- was made by the assessee under Section 14A of the Act. The Assessing Officer had examined the disallowance as made by the assessee and found that the working of the disallowance was not correct. The Assessing Officer, therefore, re-worked the disallowance under Section 14A of the Act at Rs.12,39,84,226/- and accordingly made the addition. The assessment was completed under Section 143(3) of the Act on 09.12.2018 at total income of Rs.578,58,26,070/-.

3. Aggrieved with the order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal: -

“Non-speaking order u/s.250 without considering written submission - Bad in Law

1. *The learned CIT(A) has erred in law & in facts by not considering & disposing off various grounds taken by the Appellant in appeal and instead issued show cause notice with the sole objective of confirming the order of the AO & later passed under u/s.250 of the Act without considering the submissions of the Appellant.*
- 1.1 *The learned CIT(A) has also erred in law by not following principles of natural justice & by not giving opportunity of being heard through video conferencing as sought by appellant, in case adverse view is drawn against appellant.*

2. *The order passed by the learned CIT(A) u/s. 250 is bad in law as it is a non-speaking order passed without considering or providing any reasons for non-acceptance of various arguments taken in the written submission filed by the Appellant before CIT(A) & hence required to be quashed.*

Disallowance u/s. 14A r.w.r. 8D of Rs.12,19,11,308/- without recording dissatisfaction on suo-moto disallowance [Tax Effect - Rs 4,21,91,065]

3. The learned CIT(A) has erred in fact and in law in confirming the disallowance of Rs.12.39,84,226/- u/s.14A on incorrect facts & not restricting the same to Rs.20,72,918/- being the suo-moto disallowance offered by the appellant.
 - 3.1 Leamed CIT(A) grossly erred in stating facts regarding pendency of SLP before supreme court in same matter merely by copying an incorrect assertion from the AO's assessment order of 2018. Infact the Supreme Court's order in similar matter in case of Maxopp Investment Ltd. vs. CIT was already passed in 2018 & the appellant's suo-moto disallowance of Rs.20,72,918/- is in line with principles laid down in that decision. Furthermore, the department has never filed any SLP in appellant's matter before Supreme Court.
4. The learned CIT(A) erred in fact and in law in upholding the action of the learned AO in invoking provisions of Rule 8D for computing disallowance u/s.14A of the Act without recording his dissatisfaction regarding correctness of appellant's suo-moto disallowance of Rs.20,72,918/- which is the mandatory preconditions of Section 14A(2) of the Act for invoking provisions of Rule 8D of the IT Rules, 1962.
 - 4.1 The learned CIT(A) has failed appreciate that the learned AO did not consider the fact that the Appellant has suo-moto disallowed an administrative expense of Rs 20,72,918, which has been determined on scientific basis u/s 144 of the Act & therefore AO shouldn't have resorted to rule 8D of the IT rules, 1962
5. The learned CIT(A) has erred in fact and in law in not adhere to the binding judicial precedents established in the appellant's own case vide the order of the Hon'ble ITAT Ahmedabad & Hon'ble Gujarat High Court for A.Y. 2008-09 to A.Y. 2013-14 wherein disallowance u/s.14A was restricted to the suo molo disallowance of administrative expenses made by the Appellant. The learned CIT(A)'s deviation from this well-settled position in identical factual circumstances is a clear violation of judicial discipline, rendering the impugned order untenable and unsustainable in law.

Interest expenses disallowed u/s. 14A r.w.r. 8D. despite ample own funds

6. The learned CIT(A) has erred in law and in facts in confirming disallowance of interest expenses of Rs.9,04,91,580/- under Rule 8FD(2)(1) read with Section 14A despite the fact that the Appellant had ample own funds to make investments. Judicial precedents, including rulings from the Hon'ble Supreme Court Jurisdictional High Court and the appellant's cases for A.Y. 2014-15 and 2015-16 confirm that no disallowance under Rule 8D(2)(il) is warranted in such situations

Disallowance u/s.144 r.w.r. 8D based on total investments instead of income earning investments

7. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in considering the investments from which no income exempt from tax was earned during the year for the purpose of computing disallowance u/s 14A r.w. Rule 8D
- 7.1 The learned CIT(A) has failed to appreciate the fact that in view of various judicial decisions including ITAT's decision in appellant's own case for A, Y. 2014-15 & 2015-16, only those investments which are yielding dividend income has to be considered for computing disallowance u/s 14A & hence the disallowance u/s.14A has to be restricted to Rs. 2,25,90,143/-.

Wrong levy of Interest u/s. 234D [Tax Effect - Rs. 21,09,555]

8. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in levying interest u/s. 234D of the Act
 9. The appellant reserves its right to add, amend, alter, substitute or modify all or any of the grounds stated hereinabove as the facts and circumstances of the case may justify.”
5. Shri S.N. Soparkar, Ld. Sr. Counsel, appearing for the assessee, submitted that the Ld. CIT(A) had dismissed the appeal of the assessee in a mechanical way without examining the matter on merits. He explained that the Assessing Officer had made disallowance of Rs.9,04,91,580/- on account of interest expenditure and Rs.3,34,92,646/- in respect of administrative expenses. He explained that the own funds of the assessee at the beginning of the year was Rs.5376.95 Crores whereas the total investments at the end of the year was Rs.711.50 Crores only. Thus, the assessee had sufficient own funds available to make the investments and

no interest expenditure was incurred for earning the exempt income. The Ld. Sr. Counsel submitted that this issue was also involved in assessee's own case in the A.Y. 2014-15 and 2015-16 which was decided by the Co-ordinate Bench of this Tribunal in ITA No.272 & 273/Ahd/2020 dated 29.04.2022 wherein it was held that no disallowance of interest expense can be made. On the issue of disallowance of administrative expense, the Ld. Sr. Counsel submitted that for the purpose of making disallowance only those investments should be considered for computing the average value of investment, which yielded exempt income during the relevant assessment year. In this regard, he has relied upon various judgements in his paper-book and also submitted that identical view was taken by the Tribunal in the assessee's own case in A.Y. 2014-15 and 2015-16.

6. Per contra, Shri Alpesh Parmar, Ld. CIT-DR supported the orders of the lower authorities on this issue.

7. We have considered the rival submissions. All the grounds taken by the assessee pertain to addition of Rs.12,39,84,226/- made under Section 14A of the Act read with Rule 8D of the Income Tax Rules. The first contention of the assessee that the Assessing Officer did not record dis-satisfaction with *suo moto* disallowance of Rs.20,72,918/- made under Section 14A of the Act by the assessee, is not found correct. The Assessing Officer in the assessment order had reproduced the submission dated 20.11.2018 made by the assessee in this respect and, thereafter, recorded the fact that the explanation of the assessee was not acceptable for the reason that the Department had filed SLP against the decision of Hon'ble Gujarat High Court, which was pending before the Hon'ble Supreme Court on the same issue. The Assessing Officer, after

rejecting the working of expenses as made by the assessee, had re-worked the disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules. Further, the assessee had also made a submission before the Ld. CIT(A) that the disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules may be restricted to Rs.2,25,90,143/-. This admission of the assessee establishes that the disallowance of Rs. 20,72,918/- under Section 14A of the Act as made by the assessee in the return of income, was not correct. In view of these facts, the ground taken by the assessee in this respect is dismissed.

8. The next objection of the assessee is against the disallowance of interest expense of Rs.9,04,91,580/- under Section 14A read with Rule 8D of the Income Tax Rules. The contention of the assessee is that the own funds available with the assessee was far in excess than the strategic investment of Rs.711.50 Crores made in six companies. Therefore, no disallowance in respect of interest expense was called for. The Hon'ble Supreme Court, in the case of *South Indian Bank Limited, (130 taxmann.com 178)(SC)*, has held that where, interest-free own funds available with the assessee exceeded the investments; investments would be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted under section 14A of the Act on ground that separate accounts were not maintained by the assessee for investments and other expenditure incurred for earning tax-free income. In fact, identical issue was involved in assessee's own case in A.Y. 2014-15 & 2015-16 wherein the following finding was given: -

"13.2 Now the next step comes for making the disallowance against the exempted income. As there was no suo-moto disallowance made by the assessee, there was no option available with the revenue except to make the disallowance in the manner as provided under rule 8D of

income tax rule. However, we find that the own fund of the assessee exceeds the investments. Thus, a presumption can be drawn that the assessee has made investment out of its own fund without involving any borrowed fund. The amount of own fund of the assessee stands at Rs.2,94,057.78 Lacs as on 1st April 2013 and 31 March 2014 at Rs.3,29,483.04 Lacs and likewise the amount of investment as on 1st April to 13 and 31 March 2014 stand at Rs.52,602.09 Lacs and Rs.65,610.45 lacs respectively. There is no ambiguity, that the own fund of the assessee exceeds the investments. In this regard we refer the judgment of The Hon'ble Gujarat High Court in the case of CIT vs. Torrent Power Ltd. reported in 363 ITR 474 where it was held as under:

It was noted from records that the assessee was having share holding funds to the extent of 2607.18 Crores and the investment made by it was to the extent of Rs.195.10 Crores. In other words, the assessee had sufficient funds for making the investments and it had not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the revenue which earned it the interest on bonds and dividend income. [Para 7]

13.3 *In view of the above we hold that there cannot be any disallowance of interest expenses against the impugned exempted income."*

8.1 As already discussed earlier, the own funds available with the assessee was in much excess than the investments made by the assessee. Further, the Assessing Officer had also not given any finding that any interest-bearing fund was utilised for making these investments and the disallowance was based on mere presumption. Considering these facts, the disallowance in respect of interest expenditure cannot be sustained. Respectfully following the judgement of Hon'ble Supreme Court and the decision of this Tribunal in the assessee's own case in the earlier years, the addition of Rs.9,04,91,580/- in respect of interest expense is deleted.

9. The next ground taken by the assessee is against the disallowance of administrative expenses of Rs.3,34,92,646. This disallowance has been worked out by the Assessing Officer by taking the average

investment in shares at Rs.669,85,29,218/-. The contention of the assessee is that out of total investment of Rs.711,05,14,135/- as on 31.03.2016 in six companies, dividend of Rs.18,42,17,355/- was received during the year from two companies only. Therefore, only the investment in the two companies from whom the dividend was received during the year, should be considered for working out the disallowance of administrative expense @ 0.5% of average investment as per Rule 8D of IT Rules. It is found that this issue was adjudicated by the Hon'ble Delhi High Court in the case of *Cargo Motors (P.) Limited vs. DCIT, (145 taxmann.com 641)*, wherein it was held that only those investments were to be considered for computing the average value of the investments, which yielded exempt income during the relevant assessment year. Further, an identical view was taken in the assessee's own case in A.Y. 2014-15 & 2015-16 and the finding given by the Co-ordinate Bench of this Tribunal was as under :-

Before parting, it is necessary to note that the investments which have yielded the dividend income in the year under consideration should only be considered for the purpose of making the disallowance under section 14A read with rule 8D of Income Tax Rule. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of Vision Finstock Ltd. in Tax Appeal No.486 of 2017 dated 31 July 2017 where it was held as under:

2. *From the record it emerges that, during the period relevant to the assessment year 2008-09 the assessee had earned exempt income of Rs.55,604/-. As against that, the Assessing Officer had worked out the disallowance of expenditure under section 14A of the Act read 60 to Rs. 1,02,82,049/-, The Tribunal, while restricting the disallowance to Rs.55,604/-, relied on the decision of Delhi High Court in case of Joint Investments (P.) Ltd. v. CIT reported in 372 ITR 694 holding that disallowance of expenditure in terms of Section 14A read with Rule 8D cannot exceed the exempt income itself. Our High Court has also adopted the similar view in case of Commissioner of Income Tax v. Corrttech Energy Pvt, Ltd., reported in 372 1TR 97.*

13.5 *In view of the above, and after considering the facts in totality we hold that the disallowance with respect to administrative expenses has to be made as per the provisions of law and in the manner as discussed above against the exempted income.”*

9.1 Respectfully following the above referred decisions, we direct the Assessing Officer to work out the disallowance in respect of administrative expense on the basis of average value of investment, by taking into account only those investments which have yielded exempt income during the current assessment year. The ground taken by the assessee is partly allowed.

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

Order pronounced in the open Court on this 7th October, 2025.

Sd/-
(SANJAY GARG)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 7th October, 2025

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *The PCIT*
(4) *The CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad