

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH**

**Before Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 394/Ahd/2024
Assessment Year 2008-09**

Pramukh Metal Quarry, 704 Imperial Heights, Nr. Kalali Crossing, Sun Pharma Road, Atladra, Vadodara-390012 PAN: AAJFP5189N (Appellant)	Vs	The ITO, Ward-1(2)(5), Room No. 106, 1 st Floor, Aayakar, Bhavan, Race Course Circle, Vadodara-390007 (Respondent)
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Assessee by: Shri Kinjal Shah, C.A.

Revenue by: Shri Veerbadram Vislavath, Sr. D.R.

Date of hearing : 12-01-2026

Date of pronouncement : 16-01-2026

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 31-01-2024 passed by Addl/JCIT(A), Visakhapatnam for assessment year 2008-09.

2. The grounds of appeal are as under:-

"On Legality of Order.

1. The CIT(A) has erred both in Law and in Fact in passing his Order dated 31-1-2024 in respect of Appeal filed on 7-4-2016 upholding the Reopening of the Assessment u/s. 148 of the Act and passing Order u/s.147 of the Act of Rs. 26,80,400/-.

2. Your Appellant submits that Reopening of the assessment based on order of AO of A.Y. 11-12 is bad in Law and Void and also order of AO merged with

ITAT & therefore lost its existence & CIT(A) confirmed 15% on Adhoc cannot be to relied on for A.Y. 2008-09.

3. It is also submitted that proceedings initiated of Reopening u/s 148 was for making fishing inquiries and the AO had not satisfied himself about any escapement of Income. AO did not find any new material to reopen the case.

On Merits of the Case:

1. The CIT(A) has erred in confirming disallowance of Rs.22,75,000/- being payment made by the Appellant to Shri Kapil Bhimsibhai Pithia for contractual payment made for transportation of material from the mines to the crushing plant which is during course of business of your Appellant.

(a) Your Appellant submits that at the time of finalizing the assessment for A.Y.08-09 all information and details regarding Carting payment was available and was on record and was verified by the AO and allowed the same as expense.

(b) It is therefore submitted the expenditure of Rs.22,75,000/- being incurred for business and during course of business and not being personal or of capital nature the entire disallowance be deleted.

2. The CIT(A) also erred in confirming disallowance of Rs.4,799/- being interest paid in following Account.

- (a) Interest on TDS Rs.3,060/-
- (b) Interest on VAT Rs. 1,352/-
- (c) Interest on Royalty Rs.387/-

Your Appellant submits that the entire expenditure referred above is not Penalty and it is also not personal expenditure and that the interest paid cannot be termed in the nature of Penalty as held by various authorities therefore the interest expense ought to be allowed in computing Total Income and disallowance be deleted.

3. The CTT(A) has also erred in upholding the applicability of Sec.40A(3) and confirming disallowance of Rs.42,879/- being payment made in cash to MGVC Village, Vejjur

Your Appellant submits that the expenditure is not liable to be disallowance since the payment is made to Government Body and is covered by Rule 6DD. Further the payment of Electricity Expenses is to be made in the Office of the local area of MGVC Village Vejjur, Tal. Dessar where the Appellant is not carrying any business and therefore not maintaining the Account and therefore under circumstances he was required to make payment in cash and hence it is exempt from operation of Sec. 40A(3) and the disallowance of Rs.42,879/- be deleted.

(a) The CIT(A) has erred both in Law and in fact in upholding disallowance of Rs.1,76,102/- made by the AO u/s.40(a)(ia) being interest paid to following.

- (a) GE Capital Transportation Financial Services Ltd. Rs. 1,55,682/-
- (b) Mahindra and Mahindra Financial Services Ltd. Rs.20,420/-

(b) The Appellant submits that the expenditure was paid to persons from which loan was taken by one of the partner Shri Vinodbhai L. Pithia in his personal capacity but for purposes of business of the firm and hence the interest was paid by Shri Vinodbhai L.. Pithia directly to the above two firms as referred against their name.

(c) Your Appellant had reimbursed Rs.1,76,102/- to the said Partner Shri Vinodbhai L. Pithia towards his interest payment made on behalf of firm and therefore Sec.40(a)(ia) does not apply to the facts of the case and no disallowance is called for.

(d) Alternatively and Without Prejudice, the above referred both the Companies are Limited Company duly assessed to tax having PAN No. filing Return of Income and the Income of Interest earned by them is subjected to payment of Income-tax by them respectively and and therefore also sec.40a(ia) does not apply.

Total Rs. 7,49,785/-

It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

ADDITIONAL GROUNDS OF APPEAL

“1. The CIT(A) has erred both in Law and in Fact in confirming the order passed u/s.143(3) r.w.s.148 and that no income has escaped assessment or under assessed.

2. Since no income has escaped assessment or under assess the reopening is the case of change of opinion and/or facts and details regarding Total Income were duly before AO in assessment proceedings and after verification the order was passed.

It is therefore submitted that Reopening is bad in Law and Void.

3. CIT(A) has erred both in Law and in Fact the upholding the Reopening of the Assessment u/s.148 of the Act though the Assessing Officer while issuing notice u/s. 148 and Reasons Recorded for Reopening has not taken mandatory permission of Pr. CIT/CIT u/s.151 of the Act and he has also not supplied to the Appellant copy of such permission. The CIT(A) ought to have held that the proceeding u/s.148 are bad in Law and Void.

4. Your Appellant submits that CIT(A) has erred in confirming the Order of the AO since there is a vast and clear-cut variation between Reasons Recorded and the Assessment Order and in view of binding judgement of Hon. Gujarat High Court in the case of Dhruv Parulbhai Patel vs. ACIT 367 ITR P. 234 the Assessment Order being null and void the CIT(A) should have allowed the Appeal.

5. Without prejudice to your Appellant also submits that the Reasons Recorded was to make addition of Rs. 17,76,340/- but since the said amount was not added in Asst. Order and other various items totalling to Rs.26,77,077/- which are not eligible for addition has been added which makes Asst. Order Bad-in-Law and void as per binding judgement of Hon.Guj. High Court in the case of CIT vs. Mohmed Juned Dadani 30 taxmann.com 1.

6. The CIT(A) has erred passed Order u/s.154 u/s.250 on 12-9-2024 with regard to Rectification Application of your Appellant of 29-3-2024 to correct mistake apparent on the record. Which is required for consideration and to correctness.

In view of above the order of CIT(A) be cancelled as relief claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your

Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

3. The matter is recalled to the extent of disallowance of Rs. 4,799/- on account of interest on TDS, VAT and Royalty (ii) disallowance of Rs. 42,879/- u/s. 40A(3) on payment to MVGCL and (iii) disallowance of 1,76,102/- u/s. 40(a)(ia) relating to reimbursement of interest paid by partners. In respect of disallowance of Rs. 4799/- being interest paid on TDS on VAT and Royalty, the said expenditure being the statutory expenditure cannot be allowed. Hence, ground no. 2 to that extent is dismissed.

4. As regards to disallowance of Rs. 42,879/- being payment made in cash to MVGCL are the expenditure since the payment is made to the Government Body is covered by Rule 6DD towards payment of electricity expenses. The assessee is not carrying out any business in the particular year and therefore not maintaining the account and in fact hence made payment in cash. Therefore, the assessee is entitled for the said expenses. Thus, ground no. 3 is allowed.

5. As regards to ground no. 4, the disallowance of Rs. 1,76,102/- made by the Assessing Officer u/s. 40(a)(ia), the same is interest paid to G.E. Capital Transportation Financial Services (Rs. 1,50,682/-) and M&M Financial Services Ltd. (20,020/-). The said interest was paid to person from which loan was taken by one of the partners Vinodbhai L. Pithi in his personal capacity and the interest was paid through Pithia directly to the said two firms as referred against their names. Since the interest payment was made on behalf of the firm and the said disallowance cannot be done as the reimbursement of

interest paid to partner is allowable u/s. 40(a)(ai) of the Act. Thus, ground no. 4 is allowed. Hence, the appeal filed by the assessee to that extent is allowed.

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

Order pronounced in the open court on 16-01-2026

Sd/-
(Dr. BRR Kumar)
Vice President
Ahmedabad : Dated 16/01/2026

Sd/-
(Suchitra Kamble)
Judicial Member

a.k.

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.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद