आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

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

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 719 & 720/Ahd/2016

(**निर्धारण वर्ष /** Assessment Years : 2008-09 & 2011-12)

M/s. Nabros Pharma Ltd. 3rd Floor, Nabros House, B/h. British Library, Law Garden, Ellisbridge, Ahmedabad - 380009	**बनाम**/ Vs.	**ACIT** Circle-5, Ahmedabad & **Addl. CIT** Range-5, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AAACN7886N
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

&

आयकर अपील सं./I.T.A. Nos. 788 & 789/Ahd/2016

(**निर्धारण वर्ष /** Assessment Years : 2008-09 & 2011-12)

ACIT Circle-5, Ahmedabad & **Addl. CIT** Range-5, Ahmedabad	**बनाम**/ Vs.	**M/s. Nabros Pharma Ltd.** 3rd Floor, Nabros House, B/h. British Library, Law Garden, Ellisbridge, Ahmedabad - 380009
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व की ओर से/**Revenue by :**	Shri Mudit Nagpal, Sr. D.R.
अपीलार्थी ओर से /**Assessee by :**	Shri S. N. Soparkar & Shri Parin Shah, A.R.

सुनवाई की तारीख / **Date of Hearing**	18/09/2018
घोषणा की तारीख /**Date of Pronouncement**	01/11/2018

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned cross appeals have been filed at the instance of the assessee and Revenue for A.Ys. 2008-09 & 2011-12 against the orders of the Commissioner of Income Tax (Appeals)-9, Ahmedabad ('CIT(A)' in short), dated 11.01.2016 in both assessment years arising in the assessment orders dated 31.03.2014 & 29.03.2014 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 and under s.143(3) of the Income Tax Act, 1961 (the Act); respectively.

2. We first take up the cross appeals of the assessee and Revenue concerning AY 2008-09.

ITA No. 719/Ahd/2016 - AY 2008-09 - Assessee's appeal

3. As per the grounds of appeal, the assessee has agitated the action of the CIT(A) on two grounds; firstly, the re-assessment proceedings under s.147 of the Act is marred with illegality and therefore, the action of the AO is without authority of law and secondly, re-working of exemption claimed under s.10B of the Act by artificially reducing the profits of the eligible profit by an amount of Rs.41,54,153/- with reference to provisions of Section 10B(7) r.w.s. 80IA(10) of the Act.

4. When the matter was called for hearing, the learned AR for the assessee insisted that the action of the Revenue is neither sustainable on the jurisdictional point nor on merits of the addition. The learned AR simultaneously submitted that where the Tribunal is convinced with the substantive issue on merits, the adjudication on legal ground may not be necessary. Addressing the issue on merits, the learned AR

pointed out that the assessee is a manufacturer of pharmaceutical products and has derived income from 100% export oriented unit which is eligible for deduction under s.10B of the Act. The assessee also derives income from other non-eligible unit as well. Making reference to the assessment order as well as the first appellate order, the learned AR submitted that it is the case of the Revenue that the Directors/shareholders of the assessee company have advanced huge amount of interest free funds to the assessee company running into crores during the period of exemption/deduction claimed by the assessee company under s.10B of the Act in respect of eligible unit. It was submitted that it is the case of the Revenue that by providing interest free funds to the assessee company and by not charging interest thereon, the profits of the eligible unit under s.10B of the Act has been artificially jacked up. The learned AR thus pointed out that provisions of Section 10B(7) r.w.s. 80IA(10) of the Act was applied and the AO took a view that the vailability of interest free funds of large amounts to the assessee company by the Director/shareholder was an arrangement to show more than ordinary profits by the assessee company to enable the assessee company to claim deduction on large profits under s.10B of the Act. The AO accordingly computed notional costs towards interest on such interest free funds made available by the Directors/shareholders to the company and assumed that to be an ordinary expenditure for the purposes of determination of ordinary profits in terms of Section 10B(7) r.w.s. 80IA(10) of the Act. The notional interest expenditure attributable to eligible unit amounting to Rs.41,54,153/- was accordingly reduced from the deduction available to the assessee company and as a corollary, the taxable income of the assessee company was increased to this extent. In this background, the learned AR referred to the financial statement as annexed in the paper book and submitted that while the deduction under s.10B of the Act was claimed from AY 2007-08, the

Directors/shareholders of the assessee company had provided interest free funds of similar type in the earlier financial years as well. The funds of the Directors/shareholders were also found to be their own and were not borrowed by them to, in turn, provide interest free lending to the company. The learned AR submitted that 80IA(10) of the Act does not contemplate providing for expenses on notional basis which has not been incurred by the assessee company at all. The law does not oblige the assessee to incur expenses. The learned AR also pointed out that the issue is no longer *res integra* and covered by the decision of the co-ordinate bench of Tribunal in the case of ITO vs. Gilvert Ispat ITA No. 345/Chd/2011.

5. The learned DR, on the other hand, relied upon the observations made by the CIT(A) concluding the issue against the assessee.

6. We have carefully considered the rival submissions. The central issue involved in the captioned appeal is whether an 'arrangement' of business transacted between the assesse and its Directors/shareholders can be inferred whereby the assessee earned more than ordinary profits as contemplated under s. 10B(7) r.w.s. 80IA(10) of the Act. An integral question would also arise as to whether the charge of interest on money lent by the Directors/shareholders can be said to be an activity falling within the scope of the expression 'business transacted between them' as codified in Section 80IA(10) of the Act.

6.1 Section 10B of the Act essentially provides for tax incentive in the form of deduction of profits and gains derived from export of articles or things etc. By virtue of sub-section 7 of Section 10B of the Act, fetters imposed under s.80IA (10) of the Act are applicable while determining deduction under s.10B of the Act. Section 80IA(10), in turn, seeks to negate an artificial inflation in profits due to some

business arrangements with an object to claim higher deduction. Section 80IA(10) enables the AO to substitute the ordinary and reasonable profits for the purposes of deduction under s.10B of the Act in certain circumstances.

6.2 As pointed out on behalf of the assessee and as borne out from the orders of the authorities below, it is apparent that the assessee had provided interest free funds of substantial amounts even prior to financial year 2006-07 (AY 2007-08) when the deduction under provisions of Section 10B of the Act was first availed. Secondly, Directors/shareholders have utilized their own fund for lending to the assessee company albeit interest free. Needless to say, the corporate veil exists between the shareholders and the company. The extra profit allegedly earned by the corporate company owing to such interest free funds cannot be returned to the coffers of its shareholders without incurring dividend tax etc. even under Income Tax Laws. Besides, we find it manifest that the charging of interest or otherwise on funds provided by the Directors/shareholders to the assessee company cannot fall within the sweep of expression 'business transacted between them" as contemplated under s.80IA(10) of the Act. The aforesaid expression impliedly indicates transaction in the course of 'business activity'. A mere diversion of funds in the form of interest free lending by shareholders to its company do not partake the character of a business transaction. We are alive to the fact that while alleging 'arrangement', the AO has narrated circumstances like withdrawal of interest free funds immediately on the completion of eligible period for availing benefit under s.10B of the Act. No doubt, such circumstances bring some disquiet. However, such circumstances cannot be regarded as overwhelming for the purposes of grave allegation of arrangement contemplated under s. 80IA(10) of the Act. We thus find that the Revenue has mis-directed itself in law as well as

on facts in artificially computing the non-existent interest costs and thus denying the deduction under s.10B of the Act eligible to the assessee. The action of the Revenue is wholly unsustainable in law and deserves to be set aside and cancelled. While doing so, we also note that similar issue had cropped up in the case of Gilvert Ispat (supra) also which was answered in favour of the assessee. Consequently, the order of the CIT(A) on the aforesaid issue is set aside and the AO is directed to exclude the aforesaid adjustment for the purposes of determination of profits of the assessee company under s.10B of the Act.

7. Resultantly, appeal of the assessee is allowed on merits on this score.

8. In view of the grievance of the ssessee meted out as above, we do not seek to delineate on other grounds raised.

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

10. We shall now advert to the Revenue's appeal ITA No.788/Ahd/2016

11. The Revenue in its appeal has challenged the disallowance of Rs.81,06,518/- made on account of reduction in profit eligible for deduction under s.10B of the Act. From the perusal of the order of the AO, it appears that the AO has excluded an amount of Rs.1,51,68,756/- towards freight and insurance expenses from the 'export turnover' . However, similar exclusion was not made from 'total turnover' for the purposes of computation of deduction under s.10B of the Act. This resulted in the aforesaid reduction of eligible profits for the purposes of deduction under s.10B of the Act.

12. The first appellate authority however after taking note of several decisions governing the issue has deleted the disallowance. The relevant operative para of the order of the CIT(A) reads as under:

> *"6.2 I have carefully considered the observation of the A,0, contentions of the appellant as well as the case taws relied upon by the appellant. The A.O has reworked the exemption u/s.10B of the Act whereby it has recalculated the quantum of export turnover by excluding the amount of freight and insurance totaling to Rs. 151,68,756/-. As per sec. 10B, Explanation-2, the definition of export turnover has been given wherein it has been categorically stated that the export turnover does not include freight, telecommunication charges or insurance attributable to the delivery of articles or things incurred in foreign exchange in providing the technical services outside India, However, sec.10B, Explanation-2 has not given the definition of total turnover Based on this, the A.O at para-7 of the order of reassessment has proceeded to exclude the cost of freight and insurance from the export turnover whereas the A.O has not deducted/reduced the same quantum from the amount of total turnover. I do not agree with the approach of the A.O. If the quantum of cost of freight and insurance is being reduced from the export turnover, then it has to be reduced from the quantum of total turnover, The formula for computation of deduction U/S.10B is as follows :-*
>
> $$\text{Deduction u/s.10B} = \frac{\text{Profit of the business x Export turnover}}{\text{Total Turnover}}$$
>
> *The formula helps in apportionment of profits on the basis of turnover. The export turnover would be a component or part or sub set of a denominator i.e. the total turnover. In such a scenario, if the quantum of export turnover as a part of total turnover has to be arrived at after excluding certain expenses, then the same should also be excluded in computing the total turnover in the denominator. Therefore, I disagree with the steps taken by the A.O in reducing the quantum of insurance and freight only from the export turnover and not from the total turnover, The appellant has relied on the judgments of Hon'ble High Court of Karnataka in the case of CIT vs Tata Elxi Ltd.349 ITR 98 and the ratio of ITAT Chennai in the case of ITO vs Sak Soft Ltd, 30 SOT 55 Chennai(S.B). Relying on the above referred judgments as well as the facts and circumstances of the case, the A.O is directed to exclude the quantum of insurance and freight amounting to Rs.1,51,68,756/- also from the total turnover in order to come to the right quantum of deduction u/s.10B. Therefore, this ground of appeal is allowed."*

13. With the assistance of the learned AR for the assessee, we find that apart from the several judicial precedents, the controversy is settled in favour of the assessee also by CBDT Circular No.4/2018 dated 14.08.2018. As per the CBDT circular, the expenditure incurred of such nature are required to be excluded from both 'export turnover' as well as 'total turnover' while computing deduction admissible under s.10A of the Act. In parity, we do not see any error in the order of the CIT(A).

14. In the result, appeal of the Revenue is dismissed.

15. We shall now advert to the appeal of the assessee in ITA No.720/Ahd/2016 concerning AY 2011-12.

16. The substantive grounds of appeal raised by the assessee read as under:

> *"1. Ld. CIT (A) erred in law and on facts in confirming action of AO reducing profit of the eligible unit by an amount of Rs. 51, 17,782/- with respect to late realization of export proceeds. Ld. CIT (A) ought to have allowed the deduction of export proceeds actually realized. It be so held now.*
>
> *2. Ld CIT (A) gravely erred in law and on facts in confirming reworking of exemption u/s 10B by AO reducing profit of eligible unit by an amount of Rs. 1,20,58,254/- invoking provision of sec. 10B(7) r.w.s. 80IA(10) of the Act. Ld. CIT (A) ought not to have confirmed reworking of eligible profits by fallacious application of provisions of sec. 10B (7) without proving any arrangement to show more than ordinary profits by appellant.*
>
> *3. Ld. CIT (A) erred law and on facts in confirming such notional reduction of eligible profit by AO when no interest was ever paid even before claim of deduction u/s 10B started. Ld. CIT (A) ought not to have confirmed such adjustment made by AO against legal principles in the absence of interest expenses being incurred and not charged to the eligible unit."*

17. When the matter was called for hearing, the learned AR for the assessee pointed out that Ground No.1 concerns eligibility of deduction of export proceeds realized late for the purposes of deduction under s.10B of the Act. With the assistance of the learned AR for the assessee, we find that the controversy is covered in favour of the assessee in terms of Section 155(11A) of the Act. Accordingly, the issue is decided in favour of the assessee on first principles. However, the factual aspects in this regard may be examined by the AO while determining the quantum of relief. The issue is accordingly set aside to the file of the AO for decision in the light of provisions of Section 155(11A) of the Act.

18. In the result, Ground No.1 of the as essee's appeal is allowed for statistical purposes.

19. Ground Nos. 2 & 3 concern artificial reduction of profit of eligible unit under s.10B with reference to provisions of Section 10B (7) r.w.s. 80IA of the Act. The eligible profits under s.10B of the Act is sought to be reduced towards notional interest on interest free funds. An identical issue has already been examined in the case of assessee concerning AY 2008-09 in the preceding paragraphs. In parity and for similarity of reasons, the action of the Revenue towards reducing the deduction eligible under s.10B of the Act is not sustainable in law in the absence of any perceptible arrangement contemplated under s.80IA(10) of the Act.

20. Ground Nos. 2 & 3 of the assessee's appeal are allowed.

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

22. We shall now advert to the Revenue's appeal in ITA No.789/Ahd/2016 concerning AY 2011-12.

23. The substantive grounds of appeal raised by Revenue read as under:

> *"1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,83,21,375/- made on account of reduction in profit eligible for deduction u/s.10B of the Act.*
>
> *2. The Ld. CIT(A) has erred in law and on facts by not appreciating that the gain derived on conversion of funds from EEFC account into Indian Rupee, account does not have any proximate or direct nexus with export transactions and, therefore, will not be eligible for deduction u/s 10B of the Act.*
>
> *3. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,12,111/- made on account of disallowance U/S.14A of the Act.*
>
> *4. The Ld. CIT(A) has further erred in law and on facts by not appreciating that the assessee could not establish that the investment in assets yielding exempt income was clearly made out of interest free funds available."*

24. Ground Nos.1 & 2 concern addition of Rs.1,83,21,375/- made on account of reduction in profit eligible for deduction under s.10B of the Act in respect of currency rate difference income due to foreign currency rate fluctuation.

25. In this regard, we find that the first appellate authority has examined the facts of the case in perspective in the light of law interpreted by the Hon'ble High Court in the case of CIT vs. Motorola India Electronics Pvt. Ltd. [2014] 225 Taxman 11 (Karnataka).

26. The relevant paras of the order of the CIT(A) dealing with the issue are reproduced hereunder for the sake of ready reference:

"5. Vide ground no.2, the appellant has challenged the reduction of deduction u/s.106 of the I.T.Act by Rs. 1,83,21,375/-. The A.O dealt with this issue vide para-4.3 to 4.3.3 of the assessment order. The observation of the A.O is reproduced as under :-

"4.3 Currency Conversion Income of Rs. 1,83,21,375/-:-

4.3.1 A perusal of the columnar profit and loss account of the assesses shows that the assessee has shown other income of Rs. 1,99,96,688/- under the subhead "Currency Conversion Income". The bifurcation provided by the assessee between eligible and non-eligible unit is at Rs. 1,83,21,375/- and Rs. 16,75,313/- respectively. A careful perusal shows that the assessee has claimed 10B on "Currency Conversion Income" of Rs. 1,83,21,375/- in EOU unit also. On being asked to justify the claim on this sum u/s. 10B, the assessee could not furnish any cogent reason. The assessee submitted during the assessment proceedings that the assessee maintains two accounts. The entire export proceeds on realization are credited to EEFC account maintained in foreign currency itself. Any gain on such foreign currency fluctuation is accounted for under the head "Foreign Currency Fluctuation Gain" accounts. The assessee also submitted that whenever assessee requires fund then the fund is transferred from EEFC account to bank account maintained in Indian Rupee. And whatever profit/loss arises out of such conversion of funds from EEFC account into Indian Rupee account, such gain/loss is shown as income/loss under "Currency Conversion Income" account. The claim of the assessee on this sum is not proper. Hon'ble ITAT Chennai bench in the case of Astron Document Management (P) Ltd. 16 Taxmann.com 33 (2011) has held that:-

"Gains derived by an assessee on conversion of funds from EEFC account into Indian Rupee account, does not have any proximate or direct nexus with export transaction and, therefore, will not be eligible for deduction under section 706."

4.3.2 Reliance for this ratio is also placed on the order of Hon'ble ITAT in the case of Tricom India Ltd 36 SOT 302 (Mum) (2010).

4.3.3 In view of the above, the assessee's eligible exemption/deduction u/s 10B is required to be reduced by Rs. 7,83,27,375/-."

5.1 On this issue the appellant vide its submission dated 10/9/2015 submitted as under :-

"The ld AO also erred in law and on facts in reducing the deduction under section 10B of the Income tax Act, 1961 by reducing the profit of eligible unit by an amount of Rs.7,83,27,375/- in respect of currency rate difference income

due to foreign currency rate fluctuation ignoring the submissions regarding the purpose of keeping the amount in the EFCC account for business of the appellant and not as normal investment. Since the money was kept for meeting with appellant's business obligations, the gain is part of eligible profit of the undertaking / unit and entitled to deduction u/s. 10B. It be so held now and deduction be allowed with reference to this income as claimed

In this regard your appellant draws your honour's kind attention to the provisions of section 10B(4) which reads as under:

" S . 10B(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking."

It is thus clear after the above amendment in section 706 in sub-section (4), that what is exempt u/s 706 after 1.04.2001 is not merely the profits and gains from export of articles but also the income from business of undertaking.

Therefore the profit eligible for deduction u/s 706 is the profit of the business of the undertaking. Now as already explained to the AO, the export realisation in foreign currency is kept in the EEFC account. When there is gain on conversion of the said foreign currency balance, the same is accounted for as currency conversion income. This income is income or profit of the business of the undertaking. As noted by AO in Para 4.3.1 of the assessment order , Rs.1,83,21,375/- pertained to such income of EOU Unit. The ld AO erred in observing that this sum is not eligible for deduction u/s 10B .

Your appellant draws your honour's kind attention to the judgment of the Hon'ble Karnataka High Court in the case of CIT vs Motorola India Electronics P Ltd (2014) 225 Taxman 11 (Kar) Copy attached EXHIBIT-A . The Hon'ble High Court has considered the specific provisions of section 10B and sub-section 10B(4) and held that even interest income earned from inter-corporate loans and deposits lying in EEFC account is eligible to deduction u/s 10B due to the fact that the Provisions after amendment in sub-section (4) of section 706 (reproduced above) the profit derived from export means profit of the business of the undertaking and hot the profits and gains from export of articles .

The High Court has considered all the relevant judgments and clearly held that Similar provisions re not there in section 80HHC while s. 80HHB specifically excludes such income. Thus the above income being part of the profit of the business of the

undertaking which fact is not disputed, the ld AO erred in excluding the same from the profit eligible for deduction u/s 10B.

The said judgment of the Karnataka High Court is also followed by the jurisdictional Ahmedabad ITAT in the case of M/s Karp Mfg. Co vs Addl CIT ITA No: 374 & 766/Ahd/2011 Copy attached EXHIBIT-B. The jurisdictional Tribunal vide Para 11 of the Order has held that as per the said judgment of Karnataka High Court which has taken in to account all judgments on the point at issue it has held that, due to sub-section (4) of section 706, what is exempt is not merely profits and gains from export of goods but also the income from the entire business of the undertaking.

In view of above binding judgments and the decision of the Special Bench in the case of M/s Maral Overseas by Indore Bench, the disallowance made by the Id AO is unjustified. It be so held now and disallowance on Rs.7,83,27,376/- be deleted.
As far as the Tribunal decisions of Chenna Bench and Mumbai ITAT relied on by AO, the same are not applicable since they hold that section 10B is similar to section 80HHC which is fairly and clearly dealt with by the Karnataka High Court and Ahmedabad Tribunal in above cases to be quite different.

Also since the decision of Ahmedabad Tribunal being of jurisdictional ITAT and the judgment of the High Court being binding on appellate authority , which has thoroughly dealt with and distinguished various other decisions the disallowance made by AO on decisions which are not applicable deserves to be deleted. This ground needs to be allowed. It be allowed now."

5.2 I have carefull considered the contentions of the appellant, the obsesrvation of the A.O. case relied upon by the A.O and the appellant. The A.O has reduced the deduction claimed u/s.10B of the Act by Rs. 1,83,21,375/- for the reason that the appellant had credited the export proceeds realization to the EEFC account. The A.O has relied on the Hon'ble ITAT Chennai Bench order in the case of Astron Document Management Pvt. Ltd. 16 Taman.com 33 (2011) as well as on the ratio of Hon'ble ITAT Mumbai in the case of Tricom India Ltd. 36 SOT 302 (2010). The appellant on the other hand has relied on the provisions of (Sec.10B94) wherein the appellant is emphasizing on the words 'profits of the business of the undertaking.' According to the appellant the profit eligible for deduction u/s.10B is the profit of the business of the undertaking. The export realization in foreign currency kept in EEFC account relates to the business of undertaking. The appellant has relied on the ratio of Hon'ble Karnataka High Court in the case of CIT vs Motorola India Electronics Pvt. Ltd. (2014) 225 Taxman 11 (Kar). In the said ratio the Hon'ble High Court had considered these specific provisions of sec. 10B and sub-section 10B(4) and held that interest income earned from inter-corporate loans and deposits lying in EEFC Accounts are eligible for deduction u/s.10B for the reason that as per the amended section 10B(4), the profit derived from export means profit of the

business of the undertaking and not just the profits and gains from export of articles. The said judgment of Karnataka High Court is also followed by jurisdictional ITAT Ahmedabad, in the case of M/s. Karp Manufacturing Co. vs Addl. CIT ITA .374&766/Ahd/2011.

I agree with the views expressed by the appellant as well as the case laws relied upon by the appellant. Since the export profits kept in the EEFC account relate to the business of the undertaking on which the appellant is claiming exemption u/s.10B of the Act, I hereby direct the A.O to delete the reduction of deduction u/s.10B for Rs.1,83,21,375/-. Thus, this ground of appeal is allowed."

27. We find that the action of the CIT(A) is well supported in law and does not call for any interference. The Revenue has not offered any cogent case for dislodging the order of the CIT(A). Thus, we decline to interfere.

28. In the result, Ground Nos. 1 & 2 of the Revenue's appeal are dismissed.

29. Ground Nos. 3 & 4 concern disallowance of Rs.3,12,111/- under s.14A of the Act. The aforesaid disallowance comprises of disallowance of Rs.1,23,439/- towards proportionate Rule8D(2)(ii) and Rs.1,88,672/- towards administrative expenditure presumed to be attributable for earning tax free income under s.8D(2)(iii) of the Rules.

30. On perusal of the order of the CIT(A), we find that aforesaid disallowance computed by the AO under Rule8D is partly justified to the extent of proportionate interest amounting to Rs.1,23,435/- in view of availability of interest free funds in excess of corresponding investments yielding tax free income. Therefore, the action of the CIT(A) to this extent is approved. However, the disallowance of Rs.1,88,372/- in terms of Rule 8D(2)(iii) could not have been assailed by the CIT(A) in view of the statutory presumption available to the AO under the Rule. In the absence of any assertion made on behalf of

the assessee to controvert the disallowance, we reverse the action of the CIT(A) to this extent and endorse the action of the AO. Therefore, the disallowance made by the AO to the extent of Rs.1,88,372/- is sustained.

31. In the result, Ground Nos. 3 & 4 are allowed in part.

32. In the result, appeal of the Revenue is partly allowed.

33. In the combined result, assessee's both appeals are allowed, whereas Revenue's appeal in AY 2008-09 is dismissed and in AY 2011-12 is partly allowed.

This Order pronounced in Open Court on 01/11/2018

Sd/-	Sd/-
(MADHUMITA ROY)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 01/11/2018

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।