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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No. 531/Ahd/2020
(Assessment Years: 2011-12)

Deputy Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad	Vs.	M/s. Corrtech International Pvt. Ltd., 22, Dhara Center, Nr. Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 518/Ahd/2020
(Assessment Year: 2011-12)

Corrtech International Pvt. Ltd., 22, Dhara Center, Vijay Char Rasta, Navrangpura, Ahmedabad-380009	Vs.	Assistant Commissioner of Income Tax(OSD), Range-1, Ahmedabad
[PAN No.AAACC0134G]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 528/Ahd/2020
(Assessment Year: 2012-13)

Deputy Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad	Vs.	M/s. Corrtech International Pvt. Ltd., 22, Dhara Center, Nr. Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 519/Ahd/2020
(Assessment Year: 2012-13)

Corrtech International Pvt. Ltd., 22, Dhara Center, Vijay Char Rasta, Navrangpura, Ahmedabad-380009	Vs.	Income Tax Officer, Ward-1(1)(3), Ahmedabad
[PAN No.AAACC0134G]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Dr. Darsi Suman Ratnam, CIT DR & Shri Ashok Kumar Suthar, Sr. DR

Date of Hearing	19.07.2023
Date of Pronouncement	13.10.2023

O R D E R

PER SIDDHARTHA NAUTIYAL, JM:

These cross appeals have been filed by the Assessee and the Revenue against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-1 (in short "Ld. CIT(A)"), Ahmedabad vide orders dated 28.08.2020 passed for the Assessment Years 2011-12 & 2012-13. Since common facts and issues for consideration are involved for all the years under consideration, all the appeals are being disposed of together.

We shall first take up the Department's appeal for A.Y. 2011-12 (ITA No. 531/Ahd/2020).

2. The Department has raised the following grounds of appeal:-

"1) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of land restoration expenses of Rs. 92,95,465/- being capital in nature.

2) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of Section 14A disallowance to the extent of Rs. 65,64,348/-.

3) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of land expenses from rent income of Rs. 17,88,647/-.

4) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of interest expenses of Rs. 50,39,145/-.

5) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of stamp duly & registration charges of Rs. 15,35,612/-.

6) The ld. CIT(A) has erred in law and on facts in deleting I he disallowance for bad debts of Rs. 23,15,375/-.

7) The ld. CIT(A) has erred in law and on facts in deleting I he disallowance of liquidated damages of Rs. 1,22,12,269/- and not appreciating the adverse findings of AO in the remand report regarding the lack of authentic original documents and other aspects.

8) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of provisions of Rs. 21,53,789/-.

9) The ld. CIT(A) has erred in law and on facts in deleting the disallowance on account of vehicle running expenses of Rs. 52,13,149/-and not appreciating the multiple discrepancies pointed out by the AO in the remand report in the right perspective.

10) The ld. CIT(A) has erred in law and on facts in deleting the disallowance for sundry balance written off of Rs. 69,94,062/-.

11) The ld. CIT(A) has erred in law and on facts in allowing the depreciation claim of Rs. 4,57,49,031 /- and also stating that claim could not be made otherwise than by filing return of income.

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

Ground No.1:- CIT(A) erred in deleting disallowance of land restoration expenses of Rs. 92,92,465/- being capital in nature.

3. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer disallowed land restoration expenses amounting to Rs. 92,92,465/- while following the assessment orders for Assessment Years 2007-08 to 2009-10, wherein the land restoration expenses were disallowed treating the same as capital expenditure and not revenue expenditure.

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

> *"3.2 I have carefully considered the observations of the AO as well as facts of the case and arguments of the A.R. The decision of the CIT(A) in the appellate orders of previous years, copy of which has been filed in the Paper Book furnished have also been gone through. The decision of the Hon'ble ITAT for A.Y.2007-08 has also been perused on identical issue. On perusal of the CIT(A) orders and ITATs order of earlier years in case of the appellant company itself, identical issue has been decided in favor of the appellant.* ***I also find that since the appellant company has duly accounted for the corresponding income in relation to land restoration expenses and since it has been held by my predecessors and the Hon'ble ITAT that the land restoration expense is a business revenue expenditure and not capital expenditure. Further, I agree with the A.R. that by incurring the said expenditure, no benefit of enduring nature has accrued to the appellant company as no asset has been created by the said expenditure and accordingly, it is purely a revenue expenditure incurred during the normal course of business of the Company. Thus, respectfully following the decision of the Hon'ble ITAT in appellant's own case for earlier years, the AO is directed to allow the entire expenditure on land restoration expenses as claimed by the appellant****. The addition of Rs.92,92,465/- is thus deleted. This ground of appeal is stands* ***allowed.****"*

5. Department is in appeal before us against the aforesaid order passed by Ld. CIT(A). We observe that the aforesaid issue has been allowed in favour of the assessee for Assessment Years. 2007-08, 2008-09, 2009-10 and 2010-11 by the Hon'ble ITAT in the assessee's own case. It would be useful to reproduce the relevant extracts of the order passed by ITAT for Assessment Years 2009-10, 2010-11, 2008-09, 2014-15 and 2015-16 on this issue for ready reference:-

> *"15. As regards Ground No. 1 Revenue's appeal relating to deletion of disallowance of Rs. 1,61,81,024/- made in respect of land restoration expenses. The Ld. D.R. submitted that the CIT(A) has ignored the finding of the Assessing Officer and these expenses were disallowed in A.Y. 2007-08 as*

well as for A.Y. 2008-09. The Assessing Officer has rightly treated the same as capital expenditure. The Ld. D.R. relied upon the assessment order.

16. The Ld. A.R. submitted that this issue is covered in favour of the assessee by the Tribunal in A.Y. 2008-09. The Ld. A.R. further submitted that the Assessing Officer stated in the report dated 11.05.2012 that in all the projects where land restoration expenses were claimed, corresponding income was disclosed during the year under consideration. The Ld. A.R. relied upon the order of the CIT(A).

17. We have heard both the parties and perused all the relevant material available on record. The issue is identical to the present Assessment Year to that of A.Y. 2007-08 and 2008-09 wherein the Tribunal has observed that if corresponding income has been offered for tax, therefore, these corresponding expenses should also be allowed. The finding of the CIT(A) in assessee's favour for A.Y. 2008-09 is correct and the same is applied in A.Y. 2009-10 as no distinguishing facts were pointed out by the Ld. DR. Thus, Ground No. 1 of Revenue's appeal is dismissed."

6. In view of the observations made by ITAT in assessee's own case referred to above, we find no infirmity in the order passed by Ld. CIT(A) on this issue so as to call for any interference.

7. 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. 65,64,348/- in respect of disallowance made under Section 14A of the Act.

8. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer made a disallowance of Rs. 65,64,348/- under Section 14A of the Act.

9. In appeal, Ld. CIT(A) restricted the disallowance to Rs. 2,850/- being the amount of exempt income earned by the assessee during the impugned

assessment year. While allowing the appeal of the assessee, Ld. CIT(A) made the following observations:-

> *"5.1 I have carefully considered the rival arguments and submission as well as facts and evidences furnished and available on record. The legal position laid down by various courts of law have also been perused. The main argument of the AR is that it has earned only a meager amount of exempt income i.e. only, Rs.2,850/-. Further, the investments made in earlier years as well as during the year were not made out of borrowed funds but interest free funds available with the appellant company, which are far in excess of the investments made and the exempt income earned, which facts are evident from the audited accounts as well as details furnished during the course of assessment proceedings. The AR. thus argued that the impugned disallowance be deleted or at best the same be restricted to the extent of exempt income of Rs.2,850/-. I agree with the argument of the A.R. that disallowance of Rs.65,67,198/- is wholly unjustified and illogical since by no stretch of imagination, it can be said that the appellant ,had incurred such a huge expenditure to earn a petty income of Rs.2,850/-. This was certainly not the intention of the legislature. Further, the argument of the AR that since the dividend income earned is directly credited in appellant's bank account and as neither any effort has been made, nor any human agency is involved in collecting the said dividend income, the question of incurring any expenditure for earning of exempt income does not arise, appears to be plausible apart from the fact that the AO has not disproved any of the above facts as is evident from the assessment order. I also find that the AO has not recorded any satisfaction with reference to the facts of the case and having regard to the accounts of the appellant and thereby the correctness of the claim made by the appellant. The arguments of the appellant are also sufficiently supported by the decision of various courts of law as relied upon in the written submissions. In as much as the issue of investment on which exempt income is earned having been made out of borrowed funds, I would like to draw support of a* ***recent decision of the Hon 'ble Bombay High Court in the case of PCIT vs. Shapoorji Palloji & Co, Ltd. in ITA No. 1298 of 2017, Order dated 04/03/2020,*** *wherein interalia, it is held as under:*
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> > *7. We have perused the decision of this Court in Reliance Utilities & Power Ltd. (supra) wherein it has been held that if there are funds available with the assessee, both, interest-free and overdraft and/ or loans taken then a presumption would arise that investments would be out of the interest-free funds generated or available with the assessee if the interest-free funds were sufficient to meet the investments. In the facts of that case, it was noted that the said presumption was*

established considering the finding of fact returned by the first appellate authority as affirmed by the Tribunal which is identical in the present case.

7.1 We also note that the said decision of this Court has been affirmed by the Supreme Court in CIT v. Reliance Industries Ltd, [2019] 102 taxmann.com 52/261 Taxman 165/410ITR 466.

8. In the light of the above, we do not find any good ground to entertain this question for consideration.

In view of the foregoing discussion and considering the facts of the case and respectfully following the ratio laid down by various courts of law, I direct the AO to restrict the disallowance U/S.14A of the Act to Rs.2,850/- only being the exempt income earned. The addition to the extent of Rs.65,64,348/- is thus deleted and addition of Rs.2,850/- is confirmed. This ground of appeal is thus ***partly allowed****."*

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

11. Before us, Ld. D.R. placed reliance on the observation made by the Assessing Officer. In response, Ld. Counsel for the assessee placed reliance on various judicial precedents which have held that disallowance under Section 14A cannot exceed exempt income. Further, the Counsel for the assessee submitted that the assessee is having substantial interest free funds amounting to Rs. 96.6.5 crores as against investment of 11.75 crores made by the assessee, which is almost eight times the amount of investment made by the assessee. The Counsel for the assessee also placed reliance on several judicial precedents to the fact that when the assessee has substantial interest free funds, disallowance under Section 14A of the Act is not warranted.

12. We have heard the rival contention and perused the material on record. In our considered view it is a well settled principle of law that the amount of disallowance under Section 14A of the Act cannot exceed the amount of exempt income. It may be noted that the Hon'ble Supreme Court in the case of **Caraf Builders & Constructions (P.) Ltd 112 taxmann.com 322 (SC)**, dismissed the SLP filed by the Department against High Court ruling that disallowance under section 14A cannot exceed exempt income of relevant year. This principle was affirmed by the recent Kolkata High decision in the case of Reliance Chemotex Industries Ltd 138 taxmann.com 199 (Calcutta), wherein it was held that disallowance under section 14A cannot exceed exempt income.

13. Accordingly, in view of the above judicial precedents and the facts of the assessee's case, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

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

Ground No.3:- Ld. CIT(A) erred in deleting disallowance of Rs. 17,88,647/- in respect of land expenses from rent income.

15. The brief facts in relation to this ground of appeal are that the assessee had declared rental income of Rs. 59,62,157/- against which the assessee claimed standard deduction of Rs. 17,88,647/- under Section 24 of the Act.

16. During the course of assessment the Assessing Officer disallowed the claim for deduction under Section 24 of the Act by holding that the income

from the said property should be treated as business income. In appeal, Ld. CIT(A) allowed the appeal of the assessee with the following observations:-

> *"6.2 I have carefully considered the observations of the AO as well as arguments and submissions of the A.R. On perusal of the submissions filed and the appellate orders of CIT(A) of earlier years, I find that identical issue has been decided in favor of the appellant. The observations in the CIT(A) order dated 23/07/2014 for immediate previous year i.e. A.Y.2010-11 are reproduced hereunder:*
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> > *"7.2 Identical issue came up in appellant's own case for A. Y. 2009-10. Vide order dtd. 14-06-2012 in appeal no. CIT(A)-VI/ACIT(OSD)/R-1/271/11-12, my predecessor held as under:*
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> > > *"6.3 I have considered the facts of the case; assessment order and appellant's submission. This issue is covered by my order for assessment year 2008-09. The relevant portion of the said order is quoted below –*
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> > > > ***"It is not in dispute that appellant earned rent income or leasing out part of its business and factory building.*** *Appellant also submitted copy of lease agreements and as per that, the rent was for the use of premises only and not of plant and machinery or other equipments or any other services. Therefore, appellant is justified in disclosing the rent received in house property head. There are several decisions of apex court in which it is held that income from exploitation of house property Is taxable in house property head only and not in business head. Appellant has not claimed depreciation on buildings given on rent which is also not disputed by the AO. Considering these facts I do not find any substance in assessing officer's action in not taxing rent received in house property head and taxing the same in business head without allowing depreciation.* ***Accordingly, it is held that rent received from house property is to be taxed in house property head only and not in business head. Assessing Officer is directed to allow appellant consequential deduction under section 24 after taxing the rent in house property head".***

> ***In view of the above, it is held that rent received from house property is to be taxed in house property head only and not in business head and assessing officer is directed to allow appellant consequential deduction under section 24 after taxing the rent income in house property head."***
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> *Facts remaining the same in the year under consideration, following the above-mentioned order, impugned disallowance is deleted. This ground of appeal is allowed."*
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> *6.3 In view of-above finding and respectfully following the decision of rny predecessors in appellant's own case in earlier years and since the facts of the issue in dispute for the year under consideration remaining the same, the addition of Rs.17,88,647/-is hereby deleted. This ground of appeal is thus* ***allowed.****"*

17. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) on this issue. Before us, it was submitted that the aforesaid issue is covered in favour of the assessee for Assessment Year 2009-10 (in ITA No. 1871/Ahd/2012). It would be useful to reproduce the relevant extracts of the ruling for ready reference:-

> *"20. As regards Ground No. 3 relating to allowing standard deduction under Section 24(1), the Ld. D.R. submitted that treating the rent income as house property income when the assessee has claimed expenses relevant to leased house property as business expenditure amounts to double deduction and therefore, the Assessing Officer has rightly made this addition.*
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> *21. The Ld. A.R. submitted that this issue is decided in favour of the assessee by the Tribunal in A.Y. 2008-09. We have heard both the parties and perused all the relevant materials available on record. The facts are identical in A.Y. 2009-10 to that of A.Y. 2008-09. The CIT(A) has rightly observed that rental income was on account of leasing out part of its business and factory building and not on plant and machinery or other equipments. Since the assessee has not changed the head of income at all i.e. "rental income" as "income from house property", the same cannot be changed income from any subsequent year. The CIT(A) was right in deleting the addition. Ground No. 3 of Revenue's appeal is dismissed."*

18. In view of the aforesaid observations made by the ITAT for A.Y. 2009-10 in the assessee's own case on identical issue, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

19. In the result, Ground No. 3 of the Department's appeal is dismissed.

Ground No.4:- Ld. CIT(A) erred in deleting disallowance of Rs. 50,39,145/- in respect of interest expenses.

20. The brief facts of the case are that during the course of assessment the Assessing Officer made disallowance to Rs. 50,39,145/- under Section 36(1)(iii) of the Act.

21. In appeal, Ld. CIT(A) allowed the appeal of the assessee for the reason that firstly, the assessee has been able to demonstrate that it was having substantial interest free funds at it's disposal and secondly, the Assessing Officer has failed to establish or draw a specific nexus that the borrowed funds were not utilized for business purposes and thirdly, the interest free funds were given by the assessee to it's subsidiaries for their business purposes and working capital requirements and hence the test of commercial expediency was satisfied in the instant facts. While allowing the appeal of the assessee Ld. CIT(A) observed as under:-

> *"7.3 The A.R. base on such submissions including further submissions as reproduced hereinabove vehemently argues with due respect that the decision of ld. CIT(A) in earlier years is against the binding decisions of the Hon'ble Supreme Court, jurisdictional court of law viz. Hon'ble Gujarat High Court and Hon'ble ITAT, Ahmedabad Bench as well as other courts of law in a plethora of decisions that since the interest free funds available with the appellant company are far in excess of the alleged interest free advances aggregating to Rs.4,19,92,871/- to the subsidiaries and group concerns*

namely MKB India Technical Services (P) Ltd., Control Plus Oil &. Gas Solutions Pvt. Ltd. Corrtech Trenchless Pvt. Ltd. and Cross Town Power (India) Pvt. Ltd. and the same having been given for business purpose for proper functioning of the subsidiaries and for their working capital under commercial expediency, the question of any disallowance of notional interest does not arise. The AR further stated that this fact has also been substantiated by the findings of the Hon'ble ITAT, Ahmedabad in one of the other group concerns as stated in the submissions filed as well as in plethora of other decisions rendered by the Hon'ble Apex Court as well as other courts of law including the jurisdictional court. The AR submitted with due respect that the Id. CTT(A) in the previous year has thus erred in giving a finding that in the absence of clear-cut details of utilization of funds, available with the assessee including owned funds and borrowed funds were used for all purposes including providing interest-free loans, the interest should be disallowed on the basis of formula given. In fact, the Hon'ble ITAT, Ahmedabad Bench while deciding identical in case of other group concern namely Corrtech Energy Ltd. while ignoring such formula suggested by the CIT(A) has deleted the entire addition. Thus, the AR contended that in the instant case also, instead of directing the AO to work out the amount of disallowance on the basis of formula as given in CIT(A)'s order of previous year, which is not correct keeping in view the law laid down by not only jurisdictional court of law but also the Hon'ble Apex Court, the entire addition deserves to be deleted following the decisions of jurisdictional and the Apex Court cited supra.

7.4 I have carefully considered the rival contentions, perused the material on record and have duly considered facts of the case in the light of the applicable legal position. I have also considered the oral arguments of the AR before me. On perusal of the details and evidences furnished, I find that the assessee company has sufficient interest free funds available, which interalia, include Share Capital, Reserves and Surplus, Advances from Customers as well as current liabilities in excess of sundry debtors as listed in the submissions filed by the appellant, the aggregate of interest free funds available with the appellant company is approx Rs.125.00 crores as against which the interest free advances, to sister concerns are only Rs.4.19 crores as per AO and on which the AO has charged adhoc interest @ 12% and made the addition. In view of this factual matrix, in my considered opinion, the addition of adhoc interest @ 12% on notional basis on the total outstanding amount is not justified. Further, it is the contention of the Appellant that the advances were given to its subsidiaries and it was for their business purpose and working capital requirements and keeping in view the principles of commercial expediency, the said concerns being its wholly owned subsidiaries. This being the case, I find that the Assessing Officer has failed to establish or draw a specific nexus that the borrowed funds were not utilized for business purposes as claimed in the elaborate chart of utilization of

borrowed funds given by the appellant during the course of assessment proceedings. That apart, in as much as issue of commercial expediency in advancing loan to the subsidiaries or sister-concerns is concerned, I find merit in the contention of the AR since as held by various courts of law, so far as the issue of commercial expediency is concerned, the decision has to be taken by the assessee and the Assessing Officer is not expected to sit in the chair of the assessee and to decide the business interest. The assessee is to watch its business interest well. Once it is established that there was nexus between the expenditure and purpose of the business (which need not necEssarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits. In the instant case, it is claimed that the advances given to subsidiaries is for their business purpose and have been utilized as such by them, which is not disproved by the AO. Thus, the assessee's decision to fund its subsidiaries driven by business exigency cannot be questioned in the given circumstances. Lastly, I have also perused the decision of the Hon'ble ITAT, Ahmedabad Bench in the case of other group concern namely Corrtech Energy Ltd. filed in the Paper Book, wherein interalia, the Hon'ble ITAT while ignoring similar formula suggested by the CIT(A) in that case has deleted the entire addition. Thus, respectfully following the law laid down in a host of decisions relied upon by the appellant and considering the facts of the case as well as findings and decision of the Hon'ble ITAT, Ahmedabad Bench in case of another group company cited supra, I am inclined to deviate from the decision and findings of my predecessors in appellate orders of earlier years and thus the addition of Rs.50,39,145/- is hereby deleted. This ground of appeal is thus ***allowed.****"*

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

23. Before us, the Ld. D.R. placed reliance on the observations made by the Assessing Officer in the assessment order. In response, the Counsel for the assessee submitted that the assessee has substantial interest free funds for making investments in question as is evident from the Audited Annual Accounts. Before us, it was submitted that the total interest free funds available with the assessee in the form of share capital and reserves and

surplus amounted to Rs. 90.65 crores as against interest free advances of Rs. 4.19 cores made by the assessee during the year under consideration. Accordingly, since no interest bearing funds were borrowed for making the aforesaid advances and the assessee was having substantial interest free funds available with it, no disallowance is called for under Section 36(1)(iii) of the Act.

24. We observe that it is a well as settled law that when the assessee as substantial interest free funds, disallowance under Section 36(1)(iii) of the Act is unwarranted. The aforesaid principle has been upheld in the following judgments:-

- CIT vs. Reliance Industries Ltd. – 410 ITR 466 (SC)
- CIT vs. Torrent Power Ltd. – 363 ITR 474 (Guj.)
- CIT vs. Suzlon Energy Ltd. – 354 ITR 630 (Guj.)
- CIT vs. Gujarat Power Corporation Ltd. -352 ITR 583 (Guj.)
- CIT vs. Reliance Utilities & Power Ltd. – 313 ITR 340 (Bom.)
- Munjal Sales Corporation vs. CIT – 298 ITR 298 (SC)

In the instant facts, it has not been disputed by the Department that assessee is having substantial interest free funds at its disposal. Accordingly, in view of the well settled law on the subject looking into the facts of the instant case, no interference is warranted in the order passed by Ld. CIT(A).

25. In the result, Ground No. 4 of the Department's appeal is dismissed.

Ground No. 5:- Ld. CIT(A) erred in deleting disallowance of Rs. 15,35,612/- in respect of stamp duty & registration charges.

26. The brief facts of the case are that the assessee incurred expenses of Rs. 15,35,612/- towards stamp duty and registration charges. During the course of assessment, the Assessing Officer held that the aforesaid expenses are capital in nature and further, since similar addition was made by the Assessing Officer in earlier years, he proceeded to disallow the aforesaid expenses.

27. In appeal Ld. CIT(A) allowed the appeal of the assessee by holding that on identical issue, his predecessor CIT(A) has allowed the appeal of the assessee. While allowing the appeal of the assessee, Ld. CIT(A) made the following observations:-

> *"8.1 On careful consideration of the observations of the AO, facts of the case as well as contention and arguments of the appellant and the AR, I find that identical issue has been decided in favour of the appellant in earlier years by my predecessors. The observations of my predecessor in the appellate order for A.Y.2010-11 is reproduced hereinunder:*
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> > *9.2 Identical issue came up in appellant's own case for A. Y. 2009-10. Vide order dtd. 14-06-2012 in appeal no. CIT(A)-VI/ACIT(OSD)/R-1/271/11-12, my predecessor held as under:*
> >
> > > *"8.3 I have considered the facts of the case; assessment order and appellant's submission. Assessing officer disallowed stamp duty expenses claimed by the appellant.* ***It is not in dispute that the stamp duty expenses are for working capital loan taken by the appellant and not on increase of authorized share capital.*** *Appellant submitted details and copy of account to the AO in this regard. Assessing Officer disallowed the same considering it as capital expense. However any expense incurred for obtaining working capital loan from the bank is revenue expense and not capital in nature. Only stamp duty expenses for increase in authorized share capital or for registration of immovable property are capital since these are directly relating to capital asset/liability. Working capital is a day-to-day. business requirement of the appellant and any expense incurred for procuring such loan is revenue in nature*

and cannot be disallowed as capital expense. Accordingly, the addition made by the assessing officer is deleted."

Facts remaining the same in the year under consideration, following the above-mentioned order, impugned disallowance is deleted. This ground of appeal is allowed."

On perusal of the facts and details in respect of the said expenses as placed on record and since the facts for incurrence of the said expenses remain the same i.e. the same having been incurred for working capital loan taken by the appellant and not on increase of authorized share capital, I am also of the opinion that any expense incurred for obtaining working capital loan from the bank is a revenue expense and not capital in nature since working capital is a day-to-day business requirement of the appellant and any expense incurred for procuring such loan is revenue in nature and cannot be disallowed as capital expense. Accordingly, the addition of Rs.15,35,612/- is hereby deleted. This Ground of Appeal is thus ***allowed****."*

28. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A), allowing the appeal of the assessee on this issue.

29. Before us, 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. 2009-10 (ITA No. 1871/Ahd/2012) and A.Y. 2010-11 (ITA No. 2578/Ahd/2012). It would be useful to reproduce the relevant extracts of the ITAT ruling in assessee's own case for A.Y. 2009-10, wherein the aforesaid issue was decided in favour of the assessee in the following words:-

"23. As relates to Ground No. 5 of Revenue's appeal regarding deletion of disallowance of stamp duty and share capital expenses, the Ld. D.R. submitted that the said expenses are not allowable and relied upon the assessment order.

24. The Ld. A.R. submitted that the assessee has incurred stamp paper expenses on working out capital facilities avail during the year under

consideration. Schedule 3 of Balance Sheet reveals that the assessee has availed following fresh credit facilities during the year under consideration:

Working capital:
UCO Bank – Rs.6,64,95,213/-
Axis Bank – Rs.13,36,87,119/-

Other loans:
Tata Capital Ltd. – Rs.2,73,02,122/-
Axis Bank Ltd. – Rs.4,02,22,000/-

For availing working capital facilities, stamp papers are required for executing various documents. Hence, such expenses have been incurred. Such expenses have not been incurred for increase in authorized share capital and there is no increase in authorized share capital during the year under consideration as evident from Schedule 1 of Balance Sheet. The Ld. A.R. further submitted that details of stamp duty expenses, relevant ledger and documentary evidences in support of such claim are at placed on record during the assessment proceeding. Since working capital is day-to-day business requirement expenses incurred for procuring such facilities is revenue in nature. Accordingly, impugned addition has been rightly deleted by the CIT(A). The Ld. A.R. relied upon the decision of the Hon'ble Apex Court in case of India Cement Ltd. vs. CIT, 60 ITR 52 (SC) wherein it has been held that incidental expenditure incurred for obtaining loan from a financial institution is revenue expenses.

25. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the stamp duty and share capital expenses were the requirement of the business activity on day-to-day basis and the same was properly documents by the assessee through ledger and other supporting documents which was present before the Assessing Officer. This is a incidental expenditure and therefore, cannot be held as capital expenses. The decision of Hon'ble Apex Court in case of India Cement Ltd. (Supra) is apt in the present case. Therefore, Ground No. 5 of Revenue's appeal is dismissed."

30. Accordingly, in light of the observations made by ITAT Ahmedabad in assessee's own case, Ground No. 5 of the Department's appeal is dismissed.

Ground No.6:- Ld. CIT(A) erred in deleting disallowance of Rs. 23,15,375/- in respect of bad debts.

31. The brief facts of the case are that during the course of assessment, the Assessing Officer disallowed a sum of Rs. 23,15,375/- claimed by the assessee as bad debts. The Assessing Officer was of the view that aforesaid expenses were in connection with contract with Essar Construction Ltd. pertaining to Madagaskar Project. However, the assessee has not given any ledger account of M/s. Essar Construction from which it can be deduced that such amount has been written from the books of accounts.

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

> *"9.3 I have carefully considered the rival submissions, facts of the case as well as details and evidences furnished before the AO, the copy of which is enclosed in the Paper Book submitted with the Written Submissions and further written submissions. The legal position on the issue has also been perused. On perusal of the said details, firstly there is no doubt that the appellant has written off bad debts aggregating to Rs.69,47,062/- inclusive of Rs.23,15,375/- in dispute in its books of account as is clearly evident from Schedule-M of Audited Accounts, the complete details and break-up of which has been furnished to the AO vide letter dated 06/12/2013 and 21/01/2013. The detailed chart has been placed at Page No. 392 to 398 of the Paper Book. I thus agree with the contention of the Id. AR that the AO's observation to this effect is incorrect as the bad debts have been actually written off in books of accounts and is not merely a provision. Secondly, I also agree with the contention of the AR that irrespective of the treatment given by the debtor, once the amount has been written off in the books of account of the assessee, it is sufficient to claim the same as bad debt as held by the Hon'ble Supreme Court in the case of TRF Ltd. Further, it is also not the case of the AO that the appellant company has not offered income in respect of Madagascar Project and hence once the income corresponding to amount written off is offered, the claim of bad debt cannot be denied. I also find that the AO has not commented upon the alternative claim of the appellant to allow the amount written off as business loss, u/s.28 of the Act on peculiar facts of the case as put forth before*

him and reproduced hereinabove. On examining the said alternative claim of the appellant, I find that the total amount of Sundry Balances written off includes advances given to staff in the course of business and is also incidental to business. It is trite law as laid down by various courts of law as cited by the appellant that in such circumstances, the claim of the appellant is required to be allowed as business loss, if not as a bad debt. The explanation furnished by the appellant is thus plausible and since the AO has neither controverted nor disproved the same and considering the fact that the said expenses have been incurred in the course of business of the appellant and is also incidental to it, the claim even if not considered eligible for deduction as bad debt is clearly eligible for claim as business loss as per provisions of Section 28 of the IT. Act, the same having been incurred in the course of business and more particularly in respect of Madagascar Project, the income of which has been offered in the books of accounts and since the advances given are also in the course of business. In light of above discussion and findings, the AO is directed to allow the claim of bad debts in entirety. The addition of Rs.23,15,375/- is thus deleted. This Ground of Appeal is thus ***allowed****."*

33. Before us, the Counsel for the assessee submitted that the assessee has been able to clearly demonstrate that the aforesaid amount had been written off as bad debts in the assessee's books of account as is evident from Schedule-M of Audited Accounts. It was submitted that irrespective of the treatment given by the debtor, once the amount has been written off in the books of accounts of the assessee as bad debts, the claim of the assessee cannot be disallowed as held by the Hon'ble Supreme Court in the case of **TRF Ltd. vs. CIT 323 ITR 397**. Secondly, it was argued that Ld. CIT(A) has also categorically observed that the income in respect of Madagaskar Project has also been offered to tax which has not been disputed by the Department. It was submitted that the aforesaid amount represented the amount of sums sent to Mr. Mukesh Agarwal, who was the project manager of the Madagaskar Project (Africa). Mr. Mukesh Agarwal used to provide details of expenses incurred at the Madagaskar site on monthly basis. However, one day, Mr. Mukesh Agarwal suddenly left the

job and was engaged in fraudulent activities with respect to funds provided to him in connection with the Madagaskar Project. Hence, the un-reconciled sum of Rs. 23,15,375/- standing in the name of Mr. Mukesh Agarwal was written off as bad debts. The Counsel for the assessee submitted that it is not the case of the Assessing Officer that the corresponding income from Madagaskar Project has not been offered to tax. Hence, once the corresponding income is offered to tax, Assessing Officer was not justified in disallowing the bad debts actually written off in the books of accounts of the assessee in view of the decision of Hon'ble Supreme Court in the case of TRF Ltd. (supra). Alternatively, since factum of the underlying sum being irrecoverable has not been disputed by the Assessing Officer, under such circumstances, such irrecoverable advances may be allowed as a business loss under Section 28 read with 37 of the Act. Reliance was placed on several judicial precedents in support of the aforesaid contention. In response, the Ld. D.R. placed reliance on the observations made by the Assessing Officer in the assessment order.

34. We have heard the rival contentions and perused the material on record. From the facts placed on record it is observed that it has not been disputed by the Department that the corresponding income with respect to Essar Madagaskar Project has been offered to tax by the assessee during the impugned assessment year. Further, the assessee has also been able to demonstrate that the aforesaid amount was written off as bad debt being the un-reconciled sum of Rs. 23,15,375/- standing in the name of Mr. Mukesh Agarwal, who was engaged in financial fraud with respect to funds given by the assessee company to him for meeting the project expenses.

Accordingly, we are of the view that this amount is allowable as bad debt in view of the decision of Hon'ble Supreme Court in the case of **TRF Ltd. vs. CIT 323 ITR 397**. Accordingly, looking into the facts of the instant case we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

35. In the result, Ground No. 6 of the Department's appeal is dismissed.

Ground No. 7:- Ld. CIT(A) erred in deleting the disallowance of Rs. 1,22,12,269/- in respect of liquidated damages.

36. The brief facts in relation to this ground of appeal are that during the course of assessment, the Ld. AO made addition in respect of liquidated damages claimed by the assessee. The aforesaid amount was disallowed by the Assessing Officer on the ground that though the aforesaid amount was claimed as liquidated damages, the assessee failed to produce evidences such as debit note issue by the contractor for liquidated damages and since the assessee failed to produce any evidences that the aforesaid sum was paid by the assessee to the contractor alongwith date of completion of project, the claim of the assessee cannot be allowed.

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

> *"10.3 In have carefully considered the observations and findings of the AO for making the said addition, arguments and submissions of the appellant and its A.R. as well as additional evidences and remand report of the AO as sought for by my predecessor. I have also gone through the rejoinder to remand report filed by the appellant before me. The facts which emerge on perusal of the entire material on record are that first, there was a contract*

between the appellant company and Essar Construction Ltd. for Madagascar Project, which is not in dispute. Secondly, as per Clause 4 & 5 of the said agreement, copy of which is appearing at Page No. 362 & 371 of the Paper Book furnished with Written Submission dated 10/08/2015, the complete work of the said project was to be completed by 23/09/2009 and in the event of delay in completion of work as indicated in Clause 4.0 due to any reason, the Order Price shall be reduced at the rate of 1.5 % of the total order value for delay of each full week or part thereof, subject to a maximum of 10 % of the total order value. The said facts are also not disputed 'by the AO and on the contrary has been categorically admitted by him in his observations in the assessment order. Thirdly, is also not in dispute that the Madagascar project work has indeed been completed and the appellant has shown the income in its books of account. Fourthly, it is not in dispute that the appellant has furnished various documents and evidences vide letters dated 21/01/2013, 17/04/2017 and 11/06/2018 filed during the course of assessment proceedings as well as remand proceedings in support of the expenses claimed, which more importantly include complete explanation for the expenses claimed, Copy of sub-contract agreement with Essar Construction Ltd. along with Annexures forming part of the said agreement, copy of work completion certificate issued by Essar Construction Ltd., chart giving details of the Madagascar Project and working of Net receivable amount at year end for F.Y.2008-09, 2009-10 and 2010-11, copy of last invoice vide no CIPL/ECL/10-ll/Export-07 dated 03-08-2010 for USD 13,214,771.50, which was duly certified by Essar Construction Limited at USD 8,53,787.23 after various deductions, which interalia included deduction of liquidated damages of USD 1,97,746.70, sheet giving details of Full and Final Settlement between the appellant and Essar Construction Limited dated 14/02/2011 duly signed by both the parties and giving complete facts, details and particulars such as reference to the Contract between the parties for a total amount of USD 80,31,500 and subsequent reduction xbf the project value at USD 75,02,538, the scheduled date of completion of the work was 23/09/2009 as per the contract, the actual date of completion of work on 03/08/2010 i.e. more than a year after scheduled date of completion, deduction of L. D. Charges of USD 1,97,747 from full and final settlement, chart of final amount payable to the assessee company by Essar Construction Ltd., summarized details of all transactions, exchange rate chart of USD to INR for 03/08/2011 i.e. full and final settlement, letter dated 15/06/2011 issued by Essar Construction Ltd. regarding release of Full and Final Payment of USD 2,75,000 with reference to Full and Final Settlement details dated 14/02/2011 and transfer of said amount to Axis Bank, Ahmedabad on 15/06/2011. The above comprehensive evidences are appearing on Page No, 216 to Page No. 217 and Page No. 362 to 373 of the Paper Book filed with written submissions dated 10/08/2015 as well as at Page No. 1 to 90 of the Paper Book furnished with the Rejoinder to Remand Report filed before me.

10.4 On consideration of the facts in totality, I am of the opinion that the above mentioned comprehensive and over whelming evidences cannot be simply brushed aside merely on the ground that the appellant has failed to produce the original copy of agreement. Further, the observation of the AO that no evidence has been furnished regarding date of completion of work is contrary to facts and evidences furnished. The reason given by the appellant for not being able to produce the original agreement i.e. old period and that the other copy was lying with Essar Construction Ltd. appears to be plausible and cannot be doubted in the background of the over whelming documents and evidences furnished by the appellant in support of its claim for liquidated damages. I have also noted on perusal of the assessment order that the issue of failure to produce original documents has not been raised or mentioned by the AO while passing the assessment order and making the addition, which was mainly made for the reason of not furnishing enough evidences and on probable misinterpretation of the work completion certificate. Thus, I agree with the argument of the A.R. that the AO while passing the assessment order has accepted the circumstances in which the appellant was not able to produce the original agreement. Nonetheless, the remaining evidences have been subsequently furnished by the appellant in the remand proceedings and which in my opinion are reasonable and sufficient to justify the claim of expenses on liquidated damages deducted by Essar Construction Ltd. while making full and final payment as per the terms agreed upon between them.

I am also inclined to agree with the argument of the A.R. that since the appellant company has included the total revenue from the Madagaskar Project in respective year's Profit & Loss Account, any deduction on account of Liquidated Damages in terms and conditions of the Sub-contract Agreement by Essar Construction Ltd. while making full and final settlement of dues and payment is required to be allowed as business revenue expenditure u/s.37 of the Act and that the amount of. Rs.1,22,12,269/- deducted by Essar Construction Ltd. is nothing but business revenue expenditure for delayed completion and late delivery of the "Madagaskar Project" beyond the scheduled date. In the light of the foregoing discussion and keeping in view of the facts, submissions and evidences furnished and available on record, I hold that that the expenditure under the head Late Delivery Charges [Liquidated Damages] amounting to Rs.1,22,12,269/- is business revenue expenditure incurred/suffered by the appellant company in terms of the specific clause of the sub-contract Agreement during the course of running of its business. Accordingly, the said addition made by the AO is hereby deleted. This Ground of Appeal is thus ***allowed."***

38. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A), allowing the appeal of the assessee.

39. Before us, the Counsel for the assessee drew our attention to several clauses in the agreement referring to the date of completion of the project and also the liability of the assessee to pay liquidated damages in the event of delay in completion of project. The assessee submitted that since there was a delay in completion of the project, Essar Construction deducted liquidated damages equivalent to Rs. 1,22,12,269/- from the amounts payable to the assessee. In support of the same, the Counsel for the assessee drew our attention to year-wise break-up of invoices and liquidated damages (Pages 372-373 of Paper Book), copy of contract between assessee and Essar Construction (Pages 503-511 of Paper Book), list of invoices raised by the assessee (Page 512 of Paper Book), Essar Construction's letter with respect to full and final settlement (Page 513 of the Paper Book), Essar Construction's release letter dated 15.06.2011 (Page 516 of the Paper Book). Accordingly, the Counsel for the assessee submitted that the assessee has been able to suitable demonstrate that the assessee has received payment from Essar Construction after deduction of liquidated damages and accordingly, the disallowance has been rightly deleted by Ld. CIT(A).

40. In response, Ld. D.R. placed reliance on the observation made by the Assessing Officer in the assessment order.

41. We have heard the rival contentions and perused the material on record.

42. The Hon'ble Gujarat High Court in the case **Mazda Ltd. 86 taxmann.com 27 (Guj.)** has held that liquidated damages in nature of penalty imposed by different parties of the assessee company for delaying

delivery or late completion of terms and conditions of order was very much a business expenses and hence allowable. Further, looking into the instant facts, the assessee has been able to demonstrate that the aforesaid amount represented liquidated damages which was deducted by M/s. Essar Construction on account of late completion of project. Accordingly, looking into the facts of the instant issue and the decision rendered by the Hon'ble Gujarat High Court on this issue, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

43. In the result, Ground No. 7 of the Department's appeal is dismissed.

Ground No.8:- Ld. CIT(A) has erred in deleting the disallowance of Rs. 21,53,789/- in respect of provisions.

44. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer disallowed a sum of Rs. 21,53,789/- on the ground that the aforesaid expenditure claimed by the assessee is a "provision for expenses" and that the assessee has failed to furnish any vouchers in support of the said claim of the assessee incurred in the year, but payments for which have made in the subsequent year.

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

> *"11.2 The observations of the AO as well as submissions and further submissions of the appellant and the details and evidences furnished in support of the same are carefully considered. It is seen that the appellant has not only furnished complete details of 'Current Liabilities and Provisions' but have also furnished details and break-up of the 'Provisions' which interalia includes the amount of 'Provisions for Site Expenses' amounting to*

Rs.21,53,798/- disallowed by the AO. On perusal of the said details enclosed at Page No.374 & 375 of the Paper Book filed with written submissions dated 10/08/2015 and with further submissions dated 20/01/2020, It prima facie appears that the AO was under a wrong misconception that the said amount is merely a provision and not actually incurred expenditure and the details and evidences furnished by the appellant does not appear to have been properly verified. The list of 'Creditors for Goods and Services' included therein two entries at the end of such list pertaining to 'Provisions'. The break-up of the said amounts along with narration has also been given by the appellant which clearly says that the same pertains to Site Expenses and that since the statement of expenses was to be furnished by the Site Accountant, the amount was provided for while debiting the Site Expenses following the accrual system of accounting regularly followed. It is also seen that the Provision A/c. has been squared up on making payment during the subsequent year as per normal accounting method. Thus, I agree with the argument of the A.R. that the said amount pertains to actual expenses incurred during the year and debited to respective head of expenses [Site Expenses] on accrual system of accounting but payments for which have been made in subsequent year as per settled accounting principles. On going through the chart giving details of such expenses, I find that it pertains to various expenses incurred at project sites and hence the same cannot be disallowed, more particularly when the genuineness of the same has not been questioned by the AO at any stage. The said addition of Rs.21,53,789/- is thus deleted. This Ground of Appeal stands ***allowed.****"*

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

47. On going through the facts of the instant case, we observe that Ld. CIT(A) has given categorical finding that the aforesaid amount pertains to actual expenses incurred during the year by the assessee which were claimed by the assessee following the accrual / mercantile system of accounting (both payments for which have been made in the subsequent year as per accounting principles). The Ld. CIT(A) has given a specific finding that the aforesaid amount pertains to various expenses incurred by the assessee at various project sites and the same cannot be disallowed more particularly in the light of the fact that the Assessing Officer has not

questioned the genuineness of the aforesaid expenses during the course of assessment proceedings.

48. Before us, no factual infirmity has been pointed out by the Ld. D.R. in the observations made by the Ld. CIT(A), both with respect to the actual incurrence of expenses as well as with respect to the genuineness of the aforesaid expenses. In light of the above we find no infirmity in the order passed by Ld. CIT(A) so as to call for any interference.

49. In the result, Ground No. 8 of the Department's appeal is dismissed.

Ground No. 9:- Ld. CIT(A) erred in deleting disallowance of Rs. 52,13,149/- in respect of vehicle running expenses.

50. The brief facts in relation to this ground of appeal are that during the course of assessment, the Ld. AO observed that the assessee has not provided details of expenses amounting to Rs. 54,13,149/-. Further, he observed that the aforesaid amount represents a "Provision" as appearing in the details furnished. Hence, in absence of details of expenses furnished by the assessee, the Assessing Officer disallowed the aforesaid expenses treating them as a mere provision. In appeal, Ld. CIT(A) restricted the disallowance to only Rs. 2,00,000/-, by giving relief to the assessee amounting to Rs.52,13,149/-. While allowing the appeal of the assessee Ld. CIT(A) observed as follows:-

> *"12.3 I have carefully considered the observations and findings of the AO for making the said addition, arguments and submissions of the appellant and its A.R. as well as additional evidences and remand report of the AO as sought for by my predecessor. I have also gone through the rejoinder to remand report filed by the appellant before me. The facts which emerge on*

perusal of the entire material on record are that firstly, the vehicle running expenses pertain to diesel and petrol expenses of vehicle and machines on project incurred in the course of its business. The brief facts are that total vehicle running expenses claimed by the appellant are Rs.67,38,187/- out of which an amount of Rs.54,13,149/- has been disallowed by the AO for the reason that the same are in respect of provision and secondly no evidences of payment have been furnished in respect of the said amount. The appellant has elaborately clarified and explained that it is not a provisional entry as assumed by the AO but actual expenses incurred and that the entries in the SAP accounting software has created the said confusion in the mind of the AO. On going through the accounting entry of the said expenses in SAP cited by the appellant on example basis and the evidences furnished in support of payments made, I agree with the argument of the appellant that it is not a provision but actual expenses incurred during the year in dispute.

12.4 The contention of the appellant that during the course of assessment proceedings details for each expenditure of Rs.20,000/- or more only were furnished after explaining to the then AO that the number of transactions below Rs.20,000/- were very high and were not feasible to be furnished as sought for by the AO appears to be plausible and hence the additional evidences furnished in the course of appeal are admitted. It is seen that the appellant has furnished comprehensive details and evidences in support of its claim and justification for the expenses incurred on vehicle running such as explanation of entry in SAP accounting software system in respect of narration "Provision for material services", chart giving details of vehicle running expenses giving date, name of party, mode of payment, cheque number, name of bank, amount etc. in excel format for each transaction, copy of invoices on sample basis, ledger account of vendors with summary sheet, copy of bank statements of ICICI Bank reflecting payment details. The said evidences are placed on record at Page No. 377 to 391 of Paper Book furnished with Written Submissions dated 10/08/2015 as^ well as Page No. 1 to 237 of the Paper Book forming part of Rejoinder to Remand Report filed before me.

12.5 On going through the discrepancies in chart of vehicle running expenses given vide submission dated 17/04/2017 and 21/11/2017 as pointed out by the A0!vvis-a-vis the explanation and evidences furnished by the appellant, I find that the said discrepancies largely appears to be bonafide typographical mistakes in date and number of cheque. Further, I agree with the argument of the A.R. that the said fact stands established from the period of purchase written against each entry in both the charts which itself is a proof that the date of cheque in the first chart was not correct but were a result of typographical mistake. I also find that the fact of actual payment of the vehicle running expenses is duly reflected in the bank statements furnished

by the appellant. The ledger accounts of the vendors also reflect the said fact. It is not the case of the AO that the vendors have denied having received any payment from the appellant company. The AO's observations regarding discrepancies in the nature of multiple claim of same transactions in case of M/s. Bhardwaj Service Station as per chart given by him in the assessment order, the appellant has sufficiently explained in the rejoinder to remand report by pointing out the actual facts from the-evidences available on record, which proves that the allegations of the AO are incorrect and contrary to material available on record. The Explanation on record is logical and corroborate with facts on record. On going through the evidences and explanation furnished, I agree with the argument of the A.R. that the, entries are not multiple in nature as assumed by the AO but pertains to different slips raised by the vendor for a particular month and for different vehicle numbers and that the ledger account of the vendor reflects the consolidated entry for the whole month. That apart, I am inclined to agree with the argument of the A.R. that disallowing the vehicle running expenses of Rs.54,13,149/- being aggregate of each expenditure being/below Rs.20,000/- would mean that the AO is of the opinion that more than 80% vehicle running expenses are bogus merely on account of some typographical mistakes or misunderstanding of facts and non-verification of evidences available on record would be highly absurd conclusion on part of the AO keeping in view the past records as well as the huge turnover of the company and more particularly the fact that no such disallowance of vehicle running expenses have been made in earlier years in scrutiny assessment u/s.143(3) of the Act after due verification of details and evidences furnished. I am of the opinion that since the AO took almost 2 years and 6 months for furnishing the remand report, he had ample time to resolve the discrepancies alleged by either proper verification of details available on record, more particularly when the payments have been made to the vendors by account payee cheques or by making appropriate enquiries with concerned parties in case of any doubts about the genuineness of the expenses incurred.

12.6 In connection with AO's observation that 'It is noticed that the actual hand made bill of purchase raised on 15/06/2010 has multiple transactions for the period 11/03/2010 to 29/03/2010 i.e. pertaining to F.Y.2009-10 relevant to A.Y.2010-11 and appellant's explanation that such instances are less and involves a small amount, I am of the opinion that in absence of complete details of such expenses pertaining to previous year claimed during the year and considering the fact that such instances may pertain to last few days of March, 2010 for which bills may not have been raised and the small amounts involved and also keeping in view the fact that the assessee company falls in the same tax bracket for previous year i.e. A.Y.2010-11 as well as the year in dispute i.e. A.Y.2011-12, an adhoc disallowance of Rs.2,00,000/- out of the total vehicle running expenses amounting to Rs.67,38,187/- would meet

the ends of justice. In view of above discussion and findings, the addition of Rs.54,13,149/- is restricted to Rs.2,00,000/- and the balance addition of Rs.52,13,149 stands deleted. This Ground of Appeal is thus ***partly allowed****."*

51. The Department is in appeal before us against the aforesaid relief granted by Ld. CIT(A).

52. Before us, the Counsel for the assessee submitted that the Ld. CIT(A) has correctly observed at Page 90 of the order that the amount represented expenses actually incurred by the assessee and is not merely a provisional entry. Further, it was submitted that Ld. CIT(A) has correctly observed that if the Assessing Officer were to disallow vehicle running expenses amounting to Rs. 54,13,149/- being aggregate of each and every expenditure below Rs. 20,000/- then it would lead to 80% of the vehicle running expenses being disallowed. Further, the Counsel for the assessee submitted that on facts, Ld. CIT(A) has also observed that it is also not the case of the Assessing Officer that the vendors have denied having received any payment from the assessee company in respect of vehicle running expenses. It was submitted that all the expenses disallowed by the Assessing Officer during the year under consideration are less than Rs. 20,000/- only. It was also submitted before us all payments were settled by the assessee in the subsequent assessment year. In this respect, out attention was drawn to Pages 376, 377 to 393 of the Paper Book.

53. On going through the facts of the instant case and the observations made by Ld. CIT(A), we are of the considered view that Ld. CIT(A) has not erred in facts and in law in partly allowing the appeal of the assessee on this issue.

54. In the result, Ground No. 9 of the Department's appeal is dismissed.

Ground No.10:- Ld. CIT(A) has erred in deleting disallowance of Rs. 69,94,062/- in respect of sundry balance written off.

55. The brief facts in relation to this ground of appeal are that during the course of assessment, the Ld. Assessing Officer disallowed a sum of Rs. 69,94,062/- as "sundry balances written off".

56. In appeal, Ld. CIT(A) deleted the addition with the following observations:-

> *"13.4 I have carefully gone through the observations of the AO as well as submissions of the appellant. The details of sundry balances written off aggregating to Rs.69,47,062/- have also been perused by me. On perusal of the details, it is seen that the total sundry balance written off amounting to Rs.69,47,062/- is inclusive of an amount of Rs.23,15,375/- pertaining to Madagascar Project, which has been separately added by the AO. The contention of the AR that the disallowance of the whole amount of Rs.69,47,062/- once again has resulted in double addition of Rs.23,15,375/- is found to be correct and hence without prejudice to my findings in Ground of Appeal No. 8 hereinabove in respect of the addition of Rs.23,15,375/-, the addition to the said extent out of addition of Rs.69,94,062/- [correct amount of claim is Rs.69,47,062/-] is deleted being duplicate in nature. The amount of Rs.47,000/- being mistake in addition i.e. difference between Rs.69,94,062/- and the correct amount of Rs.69,47,062/- is also hereby deleted. Coming to the balance amount of claim of Rs.46,31,687/- under the head sundry balance written off, I find that the same pertains to small outstanding balances in name of staff and clients which were irrecoverable due to staff having left the job or were small amounts outstanding in name of the debtor and hence written off in books of accounts. In respect of such claim, I find that the AO has not commented upon the alternative claim of the appellant to allow the amount written off as business loss u/s.28 of the Act on peculiar facts of the case as put forth before him and reproduced hereinabove. On examining the said alternative claim of the appellant, I find that the amounts written off includes advances given to staff in the course of "business and is also incidental to business. It is trite law as laid down by various courts of law as cited by the appellant that in such circumstances, the claim of the appellant is*

required to be allowed as business loss, if not as a bad debt. The explanation furnished by the appellant is thus plausible and since the AO has neither controverted nor disproved the same and considering the fact that the said expenses have been incurred in the course of business of the appellant and is also incidental to it, the claim even if not considered eligible for deduction as bad debt is clearly eligible for claim as business loss as per provisions of Section 28 of the IT. Act, the same having been incurred in the course of business

In as much as the amount written off as bad debts in respect of various debtors, I am of the considered opinion that the corresponding income having been offered in the earner years or during the year, no disallowance is warranted as per provisions of section 36(l)(vii) r.w.s. 36(2) of the Act since the appellant is required to merely write off the debt in its books of account as held by the Hon'ble Supreme Court in the case of TRF Ltd. cited supra. In respect of other misc. balances written off in the name of individual persons who are employees of the company and whose outstanding balances were irrecoverable owing to the fact that they left their job without clearing the dues, I agree with the contention of the AR that the same are in the nature of trading loss suffered by the appellant company while carrying on its business and therefore, is an allowable business expenditure u/s. 28 of the Act, The entire claim of the appellant in respect of Sundry Balances written off amounting to Rs.69,47,062/- [AO has wrongly added an amount of Rs.69,94,0627-] is thus allowable u/s. 36(l)(vii) as bad debts and u/s.28 as business loss as the case maybe and accordingly, in view of my findings and discussion hereinabove, the entire addition of Rs.69,94,062/ is hereby deleted. This Ground of Appeal stand ***allowed.****"*

57. The Department is in appeal before us against the aforesaid relief granted by the Ld. CIT(A) on this issue.

58. On going through the facts of the case and arguments of the assessee and the Department, we firstly observed that Ld. CIT(A) has correctly pointed out that the total sundry balances written off amounting to Rs. 69,47,062/- (it has been pointed out that this is a correct amount and not Rs. 69,94,062/- as is evident from Schedule-M of the annual accounts) is inclusive of an amount of Rs. 23,15,375/- pertaining to Madagaskar Project, which has been separately added by the Assessing Officer. Accordingly,

the Ld. CIT(A) has correctly observed that to that extent there is a double disallowance made by the Assessing Officer. As regards the balance amount of Rs. 46,31,687/-, we are of the considered view that Ld. CIT(A) has correctly observed that same represents small outstanding amounts representing small outstanding balances in the name of staff and clients which were irrecoverable due to staff having left the job or were small amounts outstanding in the name of debtors and hence written in the books of accounts. The Ld. CIT(A) also give a categorical finding that the Assessing Officer has not the disprove the aforesaid expenses as well, while disallowing the claim of the assessee. Before us, the Counsel for the assessee also submitted details of expenses at Pages 392 to 398 of the Paper Book. In light of the facts of the case and the observations made by Ld. CIT(A) in the appellate order, we find no infirmity in the order passed by the Ld. CIT(A) so as to call for any interference.

59. In the result, Ground No. 10 of the Department's appeal is dismissed.

Ground No.11:- Ld. CIT(A) erred in allowing depreciation claim of Rs. 4,57,49,013/-.

60. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer observed that the assessee had debited a sum of Rs. 4,57,49,031/- as prior period depreciation and hence was asked to furnish the working of such depreciation alongwith evidences. Accordingly, after taking the explanation of the assessee on record, the Ld. AO disallowed the aforesaid amount.

61. In appeal, the assessee submitted that the Assessing Officer failed to appreciate that the entire issue is arising out of accounting entries as a result of change in method of depreciation from Written Down Value (WDV) to Straight Line Method (SLM), resulting in a factually incorrect addition. It was submitted that due to change in method of accounting of depreciation, excess depreciation to the extent of Rs. 4,57,49,031/- was charged in earlier years and hence was shown as income under the head "extra ordinary items" as prior period depreciation.

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

> *"14.4 I have gone through the observations of the AO, submissions of the appellant company as well as facts of the case and the working of depreciation due to change of method as furnished by the appellant at Page No. 399 to 428 of the Paper Book filed with Written Submissions dated 10/08/2015. I have also gone through the original as well as revised computation of total income and the effect given in the audited accounts. On going through the observations of the AO, I find that during the course of assessment proceedings, the AO raised, a query that in the computation of total income, the depreciation as per books of Rs.7,61,97,568/- has been disallowed and added but the Depreciation shown as prior period item of Rs. 4,57,49,031/- was not disallowed and added. The reply of the appellant stood rejected by the AO. It is the argument of the ld. A.R. that the appellant company changed its method of depreciation from Written Down Value method (WDV) to Straight Line method (SLM) during the year as per the Accounting Standard-6 (AS-6) and that due to change in the method of providing depreciation in the books of account, excess depreciation to the tune of Rs. 4,57,49,031/- was worked out, which was charged in the books of accounts for earlier years. Accordingly, the same was shown under the head Prior Period below the line as Prior Period Depreciation since on account of change in the method of depreciation the assessee was required to calculate the difference in depreciation from the date of the asset put to use till the date of change in method and give effect for the entire amount of difference in Profit & Loss Account of the year of change. The calculation/working of the change in depreciation from WDV to SLM along with working of prior period depreciation was also provided to the AO vide said submission dated*

21/03/2013, copy of which is appearing on Page No. 399 to 428 of the Paper Book furnished with written submissions dated 10/08/2015. The ld. A.R. stated that the correct amount of depreciation as per books which is required to be added back should be of Rs.3,04,48,537/- pertaining to the year in dispute in view of change in method (the difference 7,61,97,568/- less excess depreciation of earlier year written back of Rs.4,57,49,031/-) but by mistake, the appellant company has added back the total amount of depreciation of Rs.7,6l,97,568/-without deducting the prior period excess depreciation of Rs.4,57,49,031/-. Accordingly, the company filed a revised computation of total income giving correct effect vide letter dated 16/09/2013.

14.5 On going through the original computation of total income as well as revised computation vis-a-vis the audited accounts, I find the arguments of the A.R. to be correct. It is seen that the computation of total income has been commenced by taking the figure of Net Loss as per Profit & Loss A/c. at Rs.16,31,35,511/-, which in fact is after considering the prior period adjustments, which interalia, included the excess depreciation of earlier years amounting to Rs.4,57,49,031/-. I agree with the argument of the A.R. that in fact the appellant company ought to have correctly commenced the computation of total income while taking the figure of Net Loss of Rs.20,88,84,541/-which was pertaining to the year under dispute i.e. without considering the figure of Prior Period Adjustment and then added back the total depreciation of Rs.7,61,97,568/-as disallowable and claimed the correct depreciation for the year as per I.T. Act amounting to Rs.18,89,59,135/-. In the alternative, if the computation is commenced with the figure of Net Loss of Rs.16,31,35,511/-, depreciation of only Rs.3,04,48,537/- should have been added back, the same being for the year under consideration. The same can be more lucidly explained in form of computation of total income by both method as under:

Computation of total income taking figure of Net Loss above the line i.e. without considering the figure of Prior Period Adjustment of Rs.4,57,49,031/-

Net Loss as per Profit & Loss A/c.		***208884541***
Less: Income considered under other heads of income as per return		*5994942*
Add:		
Depreciation as per Books	***76197568***	
[Total including prior period depreciation]		
Total of Other items as per return	*9915448*	*86113016*
Less:		
Depreciation as per I. T. Act	*188959135*	
[only pertaining to the year in dispute]		
Total of Other items as per return	*8882737*	*197841872*

Total Income		*326608339*
	i.e.	***326608340***

Computation of total income taking figure of Net Loss below the line i.e. after considering the figure of Prior Period Adjustment of Rs.4,57,49,031/-

Net Loss as per Profit & Loss A/c.		***163135511***
Less: Income considered under other heads of income as per return		*5994942*
Add:		
Depreciation as per Books	***30448537***	
[only pertaining to the year in dispute]		
Total of Other items as per return	*9915448*	*40363985*
Less:		
Depreciation as per I. T. Act	*188959135*	
[only pertaining to the year in dispute]		
Total of Other items as per return	*8882737*	*197841872*
Total Income		***326608340***

14.6 On perusal of the above working by both methods would give the same result. The appellant had merely made an inadvertent error in adding back the entire amount of depreciation as per books including the prior period depreciation while taking the net loss below the line. Thus, I am of the considered opinion that the AO appears to have misunderstood the effect of change in method in the computation of total income and accordingly has rejected the revised computation of total income submitted by the appellant under the assumption that it has multiplied the effect. I am inclined to agree with the contention of the A.R. that the AO has completely failed to appreciate the fact that prior period depreciation of Rs.4,57,49,031/- was the excess depreciation debited in the books of account in earlier years, which is a credit balance and was thus written back. Therefore, the treatment given by the appellant company in its revised computation of total income filed before the AO was correct and thus by making the disallowance again in the assessment period depreciation as short provision without properly verifying the audited accounts, notes forming part of the Schedule-E (Fixed Assets) and the submission filed during the course of assessment proceedings. The disallowance of depreciation of Rs.4,57,49,031/-made by the AO is thus factually incorrect and is therefore deleted and the AO is accordingly directed to consider the revised computation of total income while giving effect to this appeal order.

14.7 However, before parting with this issue, I would also like to address and decide the issue with reference to the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC) since the claim of the appellant has resulted in increasing the returned loss of the company. It is a matter of fact that the appellant has made the claim by filing a letter with revised computation of total income during the course of assessment proceedings in view of an inadvertent mistake in taking the correct figure of depreciation for the year as per books to be added back to total income. Thus, the said claim has not been made by filing a revised return, the limitation period for filing such revised return having expired. This being the case, the said claim is not allowable at the assessment stage, the AO having no power to do so as held ,by the Hon'ble Apex court in the case of Goetze (India) Ltd. cited supra. Thus, technically the AO is right in not accepting the claim of the appellant albeit on different ground. However, in as much as allowability of such claim at appellate stage is concerned, it has been clearly held in a catena of decisions including the jurisdictional court of law i.e. Hon'ble Gujarat High Court and ITAT, Ahmedabad Bench that the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. was limited to the power of the assessing authority and does not impinge on the power of the Appellate Authorities, Rather, the Hon'ble Apex Court in the said case has itself clarified the same in no uncertain words by observing as under:

> ***"4. . . However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs,"***

Thus, the powers of the appellate authorities are not fettered by Hon'ble Supreme Court's decision in the case of Goetze India Ltd. (supra). I also draw support from the
decision of the Hon'ble Bombay High Court in the case of Commissioner of Income-tax, Central-I, Mumbai v. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom.) which has elaborately discussed this contentious issue as well as the decision of the jurisdictional court viz. Hon'ble Gujarat High Court in the case of Commissioner of Income-tax v. Mitesh Impex [2014] 46 taxmann.com 30 (Gujarat) which has also decided, this issue against the Revenue while relying upon the decision of the Hon'ble Bombay High Court cited supra apart from other decisions as relied upon by the appellant.

14.8 The Hon'ble ITAT, Ahmedabad and Rajkot Bench in the case of Deputy Commissioner of Income Tax Vs. Adani Power Ltd., Suzlon Energy Ltd. v. Assistant Commissioner of Income-tax (OSD), Circle - 8, Ahmedabad

and DOT v. Bipin Bihari Shrivastav as relied1 upon by the appellant in its further written submissions has also decided the issue against the Revenue. The Id. A.R. also drew my attention to the following very recent decisions rendered by the Hon'ble ITAT, Mumbai Bench on identical legal issue. The observations of the court are briefly reproduced hereunder for immediate reference:

Voltas Limited v. Asst. CIT Range-8 (3)(2l Mumbai and DCIT-8(3)(2), Mumbai v. Voltas Limited, (ITAT-Mumbai} 2020 ITL 1872 in ITA No. 6612/Mum/2018 And ITA No. 7028/Mum/2O18, Order dated 30/06/2020

39. In CIT Vs Pruthvi Brokers & Shareholders Pvt. Ltd. 349 ITR 336, one of the
questions of law which came to be framed was whether on the facts and circumstances of the case, the ITAT, in law, was right in holding that the claim of deduction not made in the original returns and not supported by revised return, was admissible. The Revenue had relied upon Goetze (supra) and urged that the ITA T had no power to allow the claim for deduction. However, ^the Division Bench, whilst proceeding on the assumption that the Assessing Officer in terms of law laid down in Goetze (supra) had no power, proceeded to hold that the Appellate Authority under the IT Act had sufficient powers to permit such a deduction. In taking this view, the Division Bench relied upon the Full Bench decision of this Court in Ahmedabad Electricity Co. Ltd Vs CIT (199 ITR 351) to hold that the Appellate Authorities under the IT Act have very wide powers while considering an appeal which may be filed by the Assessee. The Appellate Authorities may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of the Assessee in accordance with law.

40. The decision in Goetze (supra) upon which reliance is placed by the HAT also makes, it clear that the issue involved in the said case was limited to the power of the assessing authority and does not impinge on the powers of the ITAT under section 254 of the said Act This means that in Goetze (supra), the Hon'ble Apex Court was not dealing with the extent of the powers of the appellate authorities but the observations were in relation to the powers of the assessing authority. This is the distinction drawn by the division Bench in Pruthvi Brokers (supra) as well and this is the distinction which the ITAT failed to note in the impugned order.

41. Besides, we note that in the present case, though the claim for deduction was not raised in the original return or by filing revised return, the Appellant - Assessee had indeed addressed a letter claiming such deduction before the assessment could be completed.

However, even if we proceed on the basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the ITAT, before whom such deduction was specifically claimed was duty bound to consider such claim. Accordingly, we are unable to agree with Ms. Linhare's contention based upon the decision in Goetze (supra).

M/s. Hexaware Technologies Ltd, v. Dy. Commissioner of Income Tax-10(1)(1) Mumbai (ITAT-Mumbai), 2020 ITL 2099 in ITA NO.1861/Mum/2018, Order dated 30/06/2020

3.2. The ld. Authorized Representative of the assessee submitted that the genuine claim of the assessee cannot be rejected merely on technicality. To support his argument the ld.Authorized Representative of the assessee placed reliance on the following decisions:-

(i) CIT vs. GM Knitting Industries Pvt. Ltd., 376ITR 456 (SC)
(ii) CIT vs. Abhinitha Foundation (P.) Ltd., 396 ITR 251 (Mad)
(iii) Chandraprabhuji Maharaj Jain vs. DCIT(Exem.), 266 Taxman 399 (Mad)

The ld. Authorized Representative of the assessee further contended that rejection of claim despite all documents available on record constitute a mistake apparent from record. The ld. Authorized Representative of the assessee contended that during the course of assessment proceedings the assessee had furnished all relevant documents for claiming deduction under section 80JJAA of the Act. However, the Assessing Officer failed to take note of assessee's claim of deduction while passing the assessment order. It was a mistake on the part of Assessing Officer in not considering assessee's claim, of deduction. The ld. Authorized Representative of the assesses to buttress his contention placed reliance on the decisions: Anchor Pressings Pvt. Ltd. vs. CIT, 161ITR169 (SC).

3.3. The ld. Authorized Representative of the assesses finally submitted that the appellate authority has inherent power to consider assessee's claim not made in the return of income in the light of decision rendered by the Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers and Share Holders, 349 ITR 233 (Bom).

> *However, the appellate authorities are not precluded from entertaining assessee's fresh claim not made in the return of income. The Hon'ble Jurisdictional High Court in the case of CIT vs. Pruthvi Brokers & Shareholders (supra) has held that an assessee is entitled to raise before appellate authorities additional claims not made in the return of income. Taking into consideration entirety of facts we are of*

considered view that assessee's claim of deduction under section 80JJAA of the Act deserves to be admitted for consideration."

14.9 Respectfully following the law laid down by the Hon'ble Courts in catena of decisions as cited supra and drawing support therefrom, I hold that the appellant is eligible to make a claim by filing a letter with revised computation of total income before the AO during the course of assessment proceedings and the appellate authority is well within his powers to allow the same on merits. In the instant case as I have already decided the issue in favor of the appellant on merits, the revised claim being on account of a genuine and bonafide inadvertent mistake while filing the original return, the addition of Rs.4,57,49,031/- is hereby deleted and the AO is directed to accept the revised computation filed by the appellant while giving effect to this order. This Ground of Appeal thus stands ***allowed.****"*

63. Before us, the Counsel for the assessee submitted that during the impugned year under consideration, the assessee changed the method of depreciation from Written Down Value (WDV) to Straight Line Method (SLM) owning to which, excess depreciation charged in the earlier years was worked out at Rs. 4,57,49,031/- was shown as prior period income in the Profit & Loss Account. The depreciation as per the SLM worked out by the assessee was Rs. 7,61,97,568/- which was debited to the P&L Account. While filing the return of income, the assessee added back depreciation as per books accounting to Rs. 7,61,97,568/- but inadvertently forgot to reduce depreciation of Rs. 4,57,49,031/- offered as income in its books. Hence, the assessee raised such claim at the assessment stage but such claim was not entertained by the Assessing Officer. The Ld. CIT(A) in appeal correctly appreciated the controversy and accordingly allowed the claim of the assessee. Before us, it was submitted the Department has not brought anything on record to suggest any infirmity in the factual findings made by the Ld. CIT(A), while allowing the appeal of the assessee on this issue. Accordingly looking into the instant facts and observations mae by Ld.

CIT(A0 while allowing relief to the assessee, we find no infirmity in the order of Ld. CIT(A) while allowing the appeal on this issue. Further, it is a settled issue that the Ld. CIT(A) has empowered to adjudicate on any new ground filed by way of revised computation in appellate proceedings.

64. Accordingly, Ground No. 11 of the Department's appeal is dismissed.

Now we shall take up the assessee's appeal for A.Y. 2011-12 (ITA No. 518/Ahd/2020):-

65. The assessee has raised the following grounds of appeal:-

"1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing employee's contribution towards PF amounting to Rs.4,16,926/- u/s 36(1)(va) r.w.s.2(24)(x) of the Act.

2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of invoking the provisions of Rule 8D without recording any dissatisfaction to the claim of appellant.

3. The learned CIT(A) has erred both in law and on the facts of the case in confirming disallowance made by the AO u/s.14A of the Act r.w.r. 8D of the Income-tax Rules, 1962 to the extent of exempt income of Rs.2,850/-.

4. The learned CIT(A) has erred both in law and on the facts of the case in confirming disallowance of vehicle repair expenses to the extent of Rs.2,00,000/- on an ad hoc basis.

5. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in levying interest u/s. 234A/B/C of the Act.

7. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in initiating penalty u/s.271(1)(c) of the Act.

8. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."

Ground No.1:- Ld. CIT(A) erred in confirming disallowance of Rs. 4,16,926/- in respect of employees' contribution toward PF.

66. Before us, the Counsel for the assessee submitted that now the issue is covered against the assessee vide decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT 448 ITR 518 (SC) and accordingly the same may be decided in light of the aforesaid decision.

67. In the result, Ground No. 1 of the assessee's appeal is dismissed.

Ground Nos. 2 & 3:- Ld. CIT(A) erred in confirming disallowance of Rs. 2,850/- under Section 14A of the Act.

68. This ground essentially corresponds to Ground No. 2 of Revenue's Cross Appeal in ITA No. 531/Ahd/2020 for A.Y. 2011-12. In this case, while confirming the disallowance under Section 14A of the Act, the Ld. CIT(A) restricted the disallowance only to the extent of exempt income earned by the assessee.

69. Accordingly, we find no infirmity in the order of the Ld. CIT(A) so as to call for any interference on this issue.

70. In the result, assessee's appeal is dismissed in respect of Ground Nos. 2 & 3.

Ground No.4:- Ld. CIT(A) erred in partly confirming disallowance of Rs. 2,00,000/- with respect to vehicle repair expenses.

71. The brief facts in relation to this ground has been discussed in Ground No. 9 of Revenue's appeal bearing ITA No. 531/Ahd/2020 for A.Y. 2011-12.

72. We observe that the Assessing Officer had made total addition of Rs. 52,13,149/- with respect to vehicle running expenses, which was restricted by the Ld. CIT(A) to Rs. 2,00,000/-. In our considered view, Ld. CIT(A) held that merely on account of few discrepancies, almost 80% of total vehicle expenses cannot be added. However, the Ld. CIT(A) also observed that there were certain discrepancies in the details filed by the assessee and by taking a balanced and reasonable approach in the matter, he restricted addition to only Rs. 2,00,000/-. Accordingly, looking into the facts of the instant case we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

73. In the result, Ground No. 4 of the assessee's appeal is dismissed.

74. The other grounds of appeal filed by the assessee are general in nature and do not require any specific adjudication.

Now we shall take up the Department's appeal for A.Y. 2012-13 (ITA No. 528/Ahd/2012)

75. The Department has raised the following grounds of appeal:-

"1) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of land restoration expenses of Rs. 95,05,928/- being capital in nature.

2) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of stamp duty & registration charges of Rs. 25,12,192/-.
3) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of interest paid on service fax of Rs. 25,40,222/-.

4) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of land expenses from rent income of Rs. 17,88,647/-.

5) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of interest expenses of Rs. 63,02,562/-.

6) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of liquidated damages of Rs. 3,16,658/-.

7) The ld. CIT(A) has erred in law and on facts in deleting the disallowance for bad & sundry balance written off of Rs. 20,80,528/-.

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

Ground No.1:- Ld. CIT(A) erred in deleting disallowance of Rs. 95,05,928/- with respect to land restoration expenses.

76. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 1 of the Department's appeal for A.Y. 2011-12.

77. 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. 25,12,192/- in respect of stamp duty & registration.

78. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 5 of the Department's appeal for A.Y. 2011-12.

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

Ground No.3:- Ld. CIT(A) erred in deleting disallowance of Rs.25,40,222/- in respect of interest paid on service tax.

80. The brief facts in relation to this ground of appeal are that during the course of assessment, the Ld. AO made disallowance of Rs. 25,40,222/- under Section 37 of the Act in respect of interest on delayed payment of service tax, on the basis that the same is for infraction of law.

81. In appeal, Ld. CIT(A) deleted the aforesaid disallowance, with the following observations:-

> *"4.1 The observations of the AO as well as submissions of the appellant have been carefully perused. I have also gone through the legal position as laid down by various courts of law as per the decisions cited and relied upon by the appellant. On perusal of facts and evidences placed on record, it is seen that the interest in question is paid on delayed payment of service tax, which the AO has treated as in infraction of law. The appellant on the contrary had filed elaborate explanation before the AO and had also relied upon various decisions to justify its claim, which stood rejected by the AO, I find that the issue in question is squarely covered by the decision of jurisdictional court viz. Hon'ble Gujarat High Court in the case of CIT vs. Kaypee Mechanical India Pvt. Ltd. cited supra. It has clearly held therein that the said interest expenses are incidental and arising out of business of the appellant and have a direct nexus with the business operation and hence is allowable u/s.37 of the Act and thus cannot be stated to be a penalty for infraction of law and instead is compensatory in nature. The various other courts of law have clearly held that payment of interest on delayed payment of Service Tax is compensatory*

in nature as per section 75 of the Service Tax Rules and there is no breach or infraction of any law. It has held by the Hon'ble courts that levy of penalty under the Service Tax Act is contemplated in Sec. 76 of the Finance Act, 1994 and accordingly the payment on late payment of service tax is compensatory in nature and is allowable as a deduction u/s. 37(1) of the Act. In view of above discussion and respectfully following the ratio laid down by various courts of law including the Hon'ble Gujarat High Court, the addition of Rs.25,40,222/- is hereby deleted. This ground of appeal is thus allowed."

82. The Department is in appeal before us in respect of the aforesaid appeal allowed by the Ld. CIT(A). Before us, it was submitted that it has not been disputed that the aforesaid payment is on account interest on delayed payment of service tax. Further, Ld. Counsel for the assessee submitted that the aforesaid issue is directly covered in favour of the assessee by the order of Gujarat High Court in the case **Kaypee Mechanical India Pvt. Ltd. 45 taxmann.com 363 (Guj.)** wherein the Gujarat High Court held that interest on delayed payment of service tax is compensatory in nature and not on account of infraction of law owing to which, the same is allowable under Section 37 of the Act.

83. Accordingly, looking into the facts of the instant case, and in the light of decision of the Hon'ble Gujarat High Court on identical issue, the appeal of the Department is dismissed. In the instant facts, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

84. In the result, Ground No. 3 of Department's appeal is dismissed.

Ground No.4:- Ld. CIT(A) has erred in deleting disallowance of Rs. 17,88,647/- in respect of land expenses from rent income.

85. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 3 of the Department's appeal for A.Y. 2011-12.

86. In the result, Ground No. 4 of the Department's appeal is dismissed.

Ground No.5:- Ld. CIT(A) erred in deleting disallowance of Rs. 63,02,562/- in respect of interest expenses.

87. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 4 of the Department's appeal for A.Y. 2011-12.

88. In the result, Ground No. 5 of the Department's appeal is dismissed.

Ground No.6:- Ld. CIT(A) erred in deleting disallowance of Rs. 3,16,658/- in respect of liquidated damages.

89. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 7 of the Department's appeal for A.Y. 2011-12.

90. In the result, Ground No. 6 of the Department's appeal is dismissed.

Ground No.7:- Ld. CIT(A) erred in deleting disallowance of Rs. 20,80,528/- in respect of bad & sundry balance written off.

91. We observe that this issue has already been dismissed in Department's appeal for A.Y. 2011-12 in ITA No. 531/Ahd/2020. Accordingly, this ground is dismissed as per directions given in Ground No. 10 of the Department's appeal for A.Y. 2011-12.

92. In the result, Ground No. 7 of the Department's appeal is dismissed.

Now we shall discuss the assessee's appeal for A.Y. 2012-13 (ITA No. 519/Ahd/2020)

93. The assessee has raised the following grounds of appeal:-

"1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing employee's contribution towards PF amounting to Rs.35,72,608/- u/s 36(1)(va) r.w.s.2(24)(x) of the Act.

2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing amount of penalty paid at checkpost of Rs.60,000/-

3. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

4. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in levying interest u/s. 234A/B/C of the Act.

5. The learned CIT(A0 has erred in law and on facts of the case in confirming action of ld. AO in initiating penalty u/s.271(1)(c) of the Act.

6. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."

Ground No.1:- Ld. CIT(A) erred in confirming disallowance of Rs. 35,72,608/- in respect of employees' contribution towards PF.

94. In light of our observation with respect to Ground No. 1 of assessee's appeal for A.Y. 2011-12 Ground No. 1 assessee's appeal is dismissed for A.Y. 2012-13.

95. In the result, Ground No. 1 of the assessee's appeal is dismissed.

Ground No.2:- Ld. CIT(A) erred in confirming disallowance of Rs. 60,000/- in respect of penalty paid at check post.

96. The brief facts in relation to this ground of appeal are that the assessee made payment of Rs. 60,000/- in the name of "ETO ICC Nangal" vide cheque dated 09.05.2011, which was claimed to be paid for entry for construction equipment for RTO charges. It was claimed that the said payment was made for allowing the entry of construction equipment as charged by the check-post officer as per said Rules and letter issued by him. The said charges have been disputed by the company by filing an appeal before the concerned authority and hence the said payment is not in the nature of penalty or any breach or infraction of law but such payment is in the nature of charges paid to check post for allowing entry of construction equipment as per the rules and hence the same is allowable expenditure.

97. In appeal, Ld. CIT(A) dismissed the ground on the ground that the assessee do not furnish any evidence which would show the nature of such charges.

98. Before us, the same arguments were taken which were to the effect that there is no infraction of law and hence the charges are allowable, looking into the instant facts. On going through the facts of the case, we observe that the assessee has not furnished any documents whatsoever to demonstrate the nature of purposes, including the letter issued by the check-post officer allowing the entry of construction equipments, or any evidence to prove that an appeal has been filed against the aforesaid charges before the concerned State Authority etc. which would substantiate the claim of the assessee that the aforesaid expenses are not towards infraction of any law. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

99. In the result, Ground No. 2 of the assessee's appeal is dismissed for A.Y. 2012-13.

100. The other grounds of appeal raised by the assessee are general in nature and do not require any specific adjudication.

101. In the result, the assessee's appeal is dismissed for A.Y. 2012-13.

102. In the combined result, the Department's appeal is dismissed for A.Y. 2011-12 and 2012-13 and the assessee's appeal is also dismissed for A.Y. 2011-12 and 2012-13.

This Order pronounced in Open Court on	**13/10/2023**

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 13/10/2023
TANMAY, Sr. PS ***TRUE COPY***

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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