आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

IT(TP)A No.446/Ahd/2015
Assessment Year : 2010-11

M/s.Atul Limited Atul House GI Patel Marg Ahmedabad 380 014. PAN : AABCA 2390 M	Vs	DCIT, Cir.1(1)(2) Ahmedabad.

(Applicant)		(Responent)

Assessee by :	Shri S.N. Soparkar, Sr.Advocate & Shri Parin Shah, AR
Revenue by :	Dr.Darsi Suman Ratnam, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : 30/01/2024
घोषणा की तारीख /**Date of Pronouncement**: 26/04/2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the assessee against order passed by the Assessing Officer (AO), Ahmedabad dated 28.10.2014 under section 143(3) read with sections 144C(13) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2010-11.

2. The assessee is in the business of manufacturing and sale of range of chemicals like dyes, agro chemicals, bulk drugs, commodity chemicals and intermediates. Assessment for the impugned year was framed by incorporating

- the Transfer Pricing adjustments made while determining the Arms Length Price of the International Transactions undertaken by the assessee with its associate enterprises by the Transfer Pricing Officer in his order passed u/s 92CA(3) of the Act and

- the directions of the Dispute Resolution Panel on the objections raised by the assessee to the additions proposed by the AO in his draft assessment order in terms of section 144(C)(13) of the Act.

Aggrieved by the same the assessee has come up in appeal before us.

3. The assessee has raised as many as sixteen grounds of appeal.

4. Ground no.1 to 6, raised by the assessee, it was contended before us, related to the issue of transfer pricing adjustment made to the international transactions entered into by the assessee with its AE in terms of provisions of section 92CA of the Act. The said grounds read as under:

> *"1. Ld. AO/ TPO/ DRP erred in law and on facts in determining upward adjustment of Rs. 1, 60, 31, 0507- in respect of international transaction without any legal and factual basis for the same. Such confirmation by Id. DRP of adjustment determined by TPO without independent application of mind or justification ought to be quashed and such adjustment be deleted.*
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> *2. Ld. DRP erred in confirming action of TPO in partially using internal CUP and partially transactional net margin method (TNMM) method without any justification. Ld. DRP ought to have quashed application of two methods by TPO and ought to have confirmed TNMM method selected by the appellant as the most appropriate method to determine the arms length nature of international transactions.*
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> *3. Ld. DRP erred in rejecting objection to division wise comparability by the TPO in place of benchmarking all international transaction on aggregated basis as applied by the appellant. It is prayed that such division*

wise comparability be quashed and aggregation of all transactions be confirmed.

4. Ld. DRP erred in confirming action of TPO in considering non AE export sales as internal comparables rejecting objections of the appellant in not considering various factors like different geographical markets, volume of sales, size of markets, difference in functions undertaken, risks assumed, difference in products etc. Ld. DRP ought to have accepted contention of the appellant of considering external comparables.

5. Ld. DRP erred in law and on facts in confirming action of TPO rejecting alternative contention of the appellant to consider associated enterprise as tested party in case of application of internal comparables over external comparables as considered by the appellant. Ld. DRP ought to have accepted alternative contention of the appellant.

6. Ld. DRP/TPO/AO erred in law and on facts in rejecting contention of the appellant to grant adjustment relating to business volume and geographical differences that ought to have been allowed considering nature of volume discount & geographical differences between AE and unrelated parties."

5. Before us, the ld.counsel for the assessee contended that his arguments were restricted only to ground no.6 raised before us. He contended that the assessee is aggrieved only on account of rejection of its contention by the DRP/AO to grant **business volume discount adjustment and geographical difference adjustment** while determining the Arms Length Price(ALP) of its International Transaction with its associate enterprise (AE). In this regard, the contention of the ld.counsel for the assessee before us was that, the ITAT has, in the case of the assessee, in the preceding years allowed both such adjustments to be made while computing arm's length price of the international transactions. He referred to the decision of the ITAT in the case of the assessee for Asst.Year 2006-07,copy of which was placed before us. He further pointed out that in earlier years, the TPO had allowed adjustment on account of geographical difference to be made while computing the ALP of the transaction.

6. The ld.DR on the other hand, contended that though the assessee was right in stating that it had been allowed volume discount adjustment in earlier years by the ITAT , and geographical difference adjustment by the TPO in earlier year ,but in the impugned year both had been denied in the absence of any evidence filed by the assessee in support of its contentions. He referred to the findings of the DRP in this regard before us.

7. The ld.counsel for the assessee countered by stating that, in principle, the assessee was entitled to such adjustment on account of the decision of the ITAT in the preceding years, and the matter, if restored back to the TPO the assessee would be able to demonstrate and establish its case for claiming such adjustment before him.

8. Having heard both the parties, we shall now proceed to adjudicate the issue by first bringing out the facts relating to the case.

7. As transpires from the orders of the authorities below the assessee had entered into international transactions with its AE's pertaining to the sale of finished goods amounting to Rs.131,67,41,988/-. The assessee had applied transactional net margin method (TNMM) to justify this transaction as being at ALP. The TPO, however, found that in earlier years, the assessee had applied comparable uncontrolled price (CUP) method for benchmarking similar transaction. Therefore, he issued a detailed show cause notice questioning the assessees benchmarking of the transaction and stating that CUP is to be used as the most appropriate method. The TPO thereafter applied CUP wherever details were available and where external CUP

could be found. For the remaining transactions, the TPO applied TNMM and compared profit margins earned by the assessee from the AE transactions with that of non-AE transactions, and made adjustments to the ALP of the transaction amounting to Rs.1,60,31,050/- .

9. Only contention of the ld.counsel for the assessee before us , as noted above, is that while determining the ALP of the transaction, adjustment be made on account of volume discount given to the AE, considering huge volume of turnover with the AEs as compared to the small volume of turnover with different non-AEs. The assessee has also sought adjustment on account of sales made in different geographical areas fetching difference prices on account of various factor determining the price in different geographies. As pointed out by the ld.counsel for the assessee and as conceded by the ld.DR also, the assessee has been allowed business volume discount adjustment in Asst.Year 2006-07 by the ITAT. Copy of the order of the ITAT for the same, in ITA No.908/Ahd/2016 dated 12.7.2022 was placed before us, wherein the ITAT has allowed this adjustment to the assessee. Finding of the ITAT in this regard from para 31 to 33 of the order are as under:

"31. The issue relates to TP adjustment made to the international transaction of purchase of goods from AE's on account of quantity discount given to them by the assessee. As transpires from the orders of the authorities below, the ITAT had restored the issue back to TPO/AO in the first round, with the direction to adjudicate it after considering the commercial policy of the assessee-company in this regard. That in the second round the TPO after considering the facts, denied the benefit by holding that the assessee could not produce any agreement with its AE and hence was not eligible for claiming quantity discount on the sales made to its AE. The ld.CIT(A) however allowed the claim of the assessee noting that the assessee had placed before him its commercial policy in this regard along with comparative data of sales to its AE and non AE's and he found that approach of the assessee in this regard as reasonable. He noted that the assessee had effectively demonstrated its commercial policy, substantiated it with its sales with AE and non-AE and considering the same, he held that rejection of the claim of the assessee by the TPO

therefore merely for the reason that there was no written agreement for the same, was not correct. The ld.CIT(A) further noted that the TPO in the original proceedings had allowed quantity discount on this very commercial policy with respect to four products in which the sales to AE was less than the non-AE's. He therefore held that the AO, having accepted the commercial policy of the assessee, in this regard, was not right in holding that the assessee had no such commercial policy with regard to rest of the quantity discount given. The relevant part of the ld.CIT(A)'s order are as under:

"6.4.1 As far as second issue with regard to quantity discount amounting to Rs.74,59,611/- is concerned, TPO during the original proceedings had restricted the adjustment of such quantity discount with respect to 4 products wherein sales to AEs were less than sale to Non-AEs. The Hon'ble Tribunal vide para 5.19.2 (Page. No. 28 of the order) directed the appellant to place its commercial policy on record. The appellant was further directed to demonstrate the basis of applying such policy. The appellant has placed before me letter dated 21/04/2014 wherein the appellant has produced its commercial policy along with comparative data of sales to its AEs and non-AEs which has been placed at page no. 148 to 151 of the P/B. The appellant has further demonstrated that it provided volume discount and adjustment to arm's length price were carried out ranging from 0 to 20%. The appellant has further produced working of such adjustments to it Arm's Length Price. In my opinion, the approach adopted by the appellant is reasonable and further the appellant has effectively demonstrated its commercial policy substantiating it with its sales to AE's and A/on AE's. It has been observed that the TPO has rejected this adjustment of the appellant merely because there was not written agreement to this effect. As stated earlier, the appellant has not executed any written agreement for quantity discount but the same is duly documented in the form of a commercial policy which is the practice adopted by the appellant since long. I further find that TPO during the original proceedings had allowed the quantity discount based on this very commercial policy. However, he restricted the adjustment on account of quantity discount claimed by the appellant with respect to only 4 products in which sales to AEs were less than Non-AEs. If that be so, the action of AO in not granting quantity discount based on well accepted commercial policy is not correct. Commercially, it is well accepted that bulk purchasers are generally given .some discount and the appellant has given such discount to AEs as per its commercial policy. Accordingly, the AO is directed to grant the benefit of Quantity Discount on such 4 products amounting to Rs.74,59,611/- and realign the ALP accordingly. So out of ,74,69,516/- challenged in this ground, addition of Rs.1,00,09,905/- is confirmed whereas addition of Rs.74,59,611/- is deleted. This ground is partly allowed."

32. Before us, the ld.DR relied on the order of the TPO to the effect that no justification had been furnished by the assessee by way of agreement with its AE or non-AE. The ld.counsel for the assessee, on the other hand, relied on the order of the ld.CIT(A).

33. We have perused the orders of the authorities below, and we do not find any infirmity in the order of the ld.CIT(A). The ld.CIT(A) has noted to the effect that the assessee had demonstrated its commercial policy with regard to quantity discount to be given to both its AE and non-AE by submitting data in this regard before him. We have further find that the ld.CIT(A) had also noted that even the AO had accepted quantity discount given by the assessee in all except four cases on the basis of existing instances of commercial policy in this regard of the assessee; that noting so, he held, having accepted existing commercial policy of the assessee to grant

quantity discount and the assessee having exhibited existence of such quantity discount vis-à-vis both of its AE and non-AE, therefore, the claim of the assessee of having paid quantity discount was substantiated and proved to be at ALP. The ld.DR was unable to point out any infirmity in the above finding of the ld.CIT(A). In view of the above, we uphold the order of ld.CIT(A) allowing the claim of the quantity discount amounting to Rs.74,59,611/- paid to its AE. This ground is rejected."

10. Similarly, it was pointed out to us that the ITAT in the case of the assessee in its order reported in 140 ITD 374 had noted that the TPO himself had allowed adjustment of transaction of sales with AE on account of geography of the sale. Our attention was drawn to this fact noted by the ITAT in its order as under:

> *".......To arrive at the Arm's Length Price the assessee has chosen to adopt the Comparable Uncontrolled Price (CUP) method as prescribed under sec.92C of the Act. Undisputedly, both the sides have chosen CUP method as the most appropriate method and there is no dispute in this regard. To arrive at the ALP, on one hand the assessee wanted five type of adjustment in the sale price fetched by the assessee from the transaction with it's AEs, but on the other hand* ***the TPO has allowed three adjustments*** *i.e. (i) adjustment of 5% towards marketing & financial risk, (ii) adjustment of 11% of long terms contract (iii)* ***adjustment of 30% to 50% of price difference due to lower price of China market.*** *But the TPO has not allowed two adjustments i.e (1) an adjustment of 100% towards 'difference in application' and (2) an adjustment of 2% to 5% towards 'quantity discount'. After giving his reasons in the impugned referral order passed u/s 92CA(3), the TPO has attached four "A", "B", "C" & "D" Annexure giving the details of comparative data of sales made to AE and Non-AE.*

11. Therefore, it is clear that the assessee has been allowed adjustment to the sale price to its AEs on account of volume discount and on account of geography of sale.

12. Having said so, we consider it fit to restore this issue back to the TPO to re-adjudicate the issue after considering the facts placed before us by the assessee on the issue of quantity discount and geographical adjustment.

13. Ground Nos.1 to 6 are accordingly allowed as per above terms for statistical purpose.

14. Ground No.7 raised by the assessee reads as under:

> *"Ld. DRP erred in law and on facts in confirming disallowance made by AO of Rs.59,49,105/- on account of prior period expenses. Ld. DRP ought to have allowed prior period expenses crystallized during the year claimed after netting off with prior period income. It be so held now."*

15. As is evident from the perusal of the above ground, the issue in challenge before us relates to confirmation by the ld.DRP/AO of disallowance of prior period expenses incurred by the assessee amounting to Rs.59,49,105/-. The contention of the ld.counsel for the assessee before us was that an identical issue had been adjudicated in favour of the case in Asst.Year 2006-07 and 2007-08 by the ITAT. Our attention in this regard was drawn to the order passed by the ITAT in ITA No.908/Ahd/2016 and IT(TP)A.No.1108/ Ahd/2017 pertaining to Asst.Year 2006-07 and 2007-08, both by a consolidated order dated 12.7.2022. Copy of the order was placed before us, and our attention was drawn to relevant paragraph of the order dealing with this issue.

The ld.DR fairly conceded to the aforestated facts.

16. Having said so, we shall now proceed to adjudicate the issue first beginning with the facts related to the disallowance of prior period expenses by the AO and its confirmation by the ld.DRP/AO.

17. The assessment order reveals that the assessee had debited net prior period expenses of Rs.59,49,105/- in its profit & loss account. Since no evidences of such expenses crystalising in the impugned year were filed by the assessee, the AO held that the same was not allowable in the impugned year.

18. With regard to the prior period income against which the prior period expenses had been netted and the net expenses claimed in the P&L account, the AO held that the same to be taxable in the impugned year on the basis of the accrual or receipt. Accordingly,

the addition of Rs.59,49,105/- was made to the income of the assessee disallowing prior period expenses incurred by the assessee.

19. We have heard contentions of the ld.counsel for the assessee that an identical issue was adjudicated by the ITAT in the case of the assessee for Asst.Year 2006-07 and 2007-08. Copy of the order of the ITAT was placed before us. We have noted from the same that in para-14 of the order, pertaining to Asst.Year 2006-07 in ITA No.823/Ahd/2016, the Tribunal dealt with the issue of the prior period expenses noting the fact that in the said year, the assessee had netted off prior period expenses against prior period income and claimed the net as expenses; that the AO had disallowed entire prior period expenses and taxed the prior period income in the impugned year. The disallowance of prior period expenses had been made for the identical reason that the assessee was unable to establish that the expenses was crystalised in the impugned. The ITAT at para-20 of its order allowed the claim of prior period expenses following the decision of Hon'ble jurisdictional High Court in the case of Adani Enterprise Ltd., in Tax Appeal No.566 of 2016 holding that where the disallowance of prior period expenses is a tax neutral exercise, since the assessee has incurred year to year with the tax rate also being the same in the years, there is no reason to make any such disallowance of prior period expenses. The Tribunal had noted the fact that the assessee had been consistently debiting prior period expenses in the past also, and considering this fact, and applying the decision of the Hon'ble jurisdictional High Court, the Tribunal allowed the claim of prior period expenses in Asst.Year 2006-07. The ITAT followed its decision in the case of the assessee for Asst.Year 2007-08 also, allowing the claim of prior period expenses at para-40 to 42 of its order. Since, we have noted the facts in the present being identical to that of the preceding year, and the ld.DR

was also enable to pointed out any distinction in facts from the preceding years, the decision rendered by the ITAT in Asst.Year 2006-07 and 2007-08 will clearly applied to the present case, following which, we hold that the disallowance of prior period expenses to the tune of Rs.59,49,105/- is not tenable and is directed to be deleted.

Ground No.7 is of the assessee is allowed.

20. The ground no.8 raised by the assessee reads as under:

> *"Ld DRP/AO erred in law and on facts in confirming disallowance of expenses invoking provision of section 14A r w rule 8D of Rs.37,03,505/-without establishing any nexus between borrowed funds and investments. Ld. DRP ought to have deleted total disallowance appreciating the fact that appellant invested in securities from internal accruals. It be so held now."*

21. The issue raised in the above grounds relates to the disallowance of expenses pertaining to the earning of exempt income in terms of provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962.

22. The arguments of the ld.counsel for the assessee before us was that, the disallowance so made under section 14A of the Act of Rs.37,03,505/- comprised of two components – on account of interest expenses, and the other on account of administrative expenses attributable to the earning of exempt income.

23. With respect to first component of interest expenses disallowed, the contentions of the ld.counsel for the assessee was that the assessee had sufficient owned interest free funds for the purpose of making investments warranting no disallowance of interest under section 14A of the Act . Reliance was placed on various decisions of the Hon'ble High Courts as under:

i) Pr.CIT Vs. Binani Industries Ltd., (2022) 145 taxmann.com 431 (Cal);
ii) Pr.CIT Vs. PTC India Financial Services Ltd., (2023) 146 taxmann.com 174 (Del)
iii) CIT Vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom)

24. With respect to the disallowance of administrative expenses, solitary contention of the ld.counsel for the assessee before us was that the same be computed in terms of Rule 8D of the Income Tax Rules, 1962, taking into consideration only those investments which had yielded exempt income. Reliance, in this regard was placed on the decision of the Special Bench of the ITAT in the case of Vireet Investments P.Ltd.(supra).

25. The ld.DR, however, countered by stating that the ld.DRP had already taken into consideration all aspects of the matter, while considering the issue of the disallowance of expenses under section 14A of the Act excluding such investments, which were not to be considered for the purpose of computing the disallowance. He therefore opposed the contentions of the ld.counsel for the assessee in such terms and relied heavily on the findings of the ld.CIT(A) in this regard.

26. Having heard arguments of both the parties, we now proceed to bring out the fats relating to the issue.

27. A perusal of the order of the AO reveals on noting the fact that, the assessee had earned exempt income in the form of dividend income amounting to Rs.4,96,83,989/- during the year while no disallowance of expenses pertaining to the earning of such exempt income was made by the assessee in terms of provisions of section 14A of the Act. He proceeded to compute the disallowance of such

expenses as mentioned in Rule 8D of the Income Tax Rules for the said purpose. Accordingly, he computed the interest expenses disallowance in the present case to Rs.30,56,363/- and the administrative expenses to be disallowed amounting to Rs.6,47,143/-; in effect resulting in disallowance of Rs.37,03,505/- under section 14A of the Act.

28. On the aspect of disallowance of interest expenses under section 14A of the Act, it is settled law that where the assessee has sufficient owned interest free funds for the purpose of making investment, no disallowance of interest expenses is warranted. Hon'ble Apex Court has laid down this proposition in number of cases beginning with South Indian Bank Ltd. Vs. CIT (2021 130 taxmann.com 178.

29. Having said so, the ld.counsel for the assessee has demonstrated the facts in the present case. Copy of the audited annual accounts pertaining to the impugned year filed before us in PB Page No.3 o 136. He drew our attention to specific page no.66 being the balance sheet of the assessee as on 31.3.2010, and has pointed out that while the reserves and surplus of the assessee were to the tune of Rs.454.93 crores, investments were to the tune of Rs.65.02 crores.

30. Having noted the aforestated facts, it is evident that the assessee had sufficient interest free funds for the purpose of making investment earning exempt income. Applying the proposition of law as settled by the Hon'ble Apex Court, we have no hesitation in holding that in the facts of the present case, no disallowance of interest under section 14A of the Act was warranted. The

disallowance therefore made of interest amounting to Rs.30,56,363/- is accordingly directed to be deleted.

31. As for the disallowance of expenses to the tune of Rs.6,47,143/-, the ld.counsel for the assessee's contention is that the same be computed in terms of Rule 8D, considering these investments, which have earned exempt income. In this regard, he has referred to the decision of the Special Bench in the case of Vireet Investments P.Ltd. (supra).

32. The ld.DR was unable to bring on record any contrary decision of any higher Courts on this issue nor was he able to point out that the AO had considered this aspect and then worked out the disallowance of administrative expenses in the present case.

33. In view of the same, we hold that the following the decision of the Special Bench of the ITAT in the case of Vireet Investments P.Ltd. (supra), the AO is directed to re-compute the disallowances of administrative expenses, considering only those investments, which have earned exempt income.

Ground no.8 raised by the assessee is allowed for statistical purposes in the above terms.

34. Ground Nos.9 and 10 read as under:

> 9. *Ld. DRP/AO erred in law and on facts in confirming disallowance of bad debts claimed of Rs.17,15,000/- by the appellant. Ld. DRP ought to have allowed the claim of the irrecoverable amounts written off in the books. It be so held now.*
>
> 10. *Alternatively and without prejudice amount advanced for the purpose of business written off in the books be allowed as 'business loss' or 'trading loss' u/s 28 of the Act. It be so held now.*

35. As is evident from the perusal of the above grounds, the same relates to disallowance of bad debts claimed by the assessee amounting to R.17.15 lakhs. The contention of the ld.counsel for the assessee before us was that the amounts in question related to business advances made by the assessee to various parties in the course of business, and on account of their irrecoverability, they were allowable as business loss to the assessee in terms of section 28 of the Act. He relied on the decision of the jurisdictional High Court in the case of CIT Vs. Abdul Razak & Co., 136 ITR 825 (Guj). The ld.DR however, countered by stating that the fact pleaded by the ld.counsel for the assessee that the impugned amount related to the business advance, needed verification, and therefore, the matter needs to be restored back to the AO for this purpose. To this, the ld.counsel for the assessee countered by saying that all the details of these advances sufficiently showed that these were very small amounts ranging from Rs.10,000/- to Rs.20,000/- (+ odd) given during the course of business, and being a very old appeal, no purpose will be served by restoring the issue back to the AO. He contended that the details of these advances would reflect that the assessee had initially claimed bad debts to the tune of Rs.17.15 lakhs, and grounds raised before us also reflected the said fact. He contended that out of this claim of Rs.17.15lacs, the assessee wanted relief only to the tune of Rs.7.15 lacs with respect to small business advances given by the assessee, as reflected in the details; that amount advanced on account of capital ,amounting to Rs.10.00 lakhs plus odd, was not being claimed by the assessee as a business loss under section 28 of the Act. He, therefore, pleaded that there was no need to restore the matter back to the AO considering small amounts involved, which was being claimed by the assessee, as loss of the business advances.

36. Having heard contentions of the ld.counsel for the assessee, we shall now proceed to bring out the facts of the case, and adjudicate the issue before us. The details of the bad debts claimed by the assessee in its return of income reproduced at page no.12 of the assessment order, which is as under:

No.	Name of the party	Amount	Remarks
1	Old Balance of canara bank	0.20	Deposit with bank
2	Sundry debit balance written off – Sundry Deposit	2.71	Deposit
3	SBI navasheva	0.10	Deposit
4	BOE small	0.19	Deposit
5	Rent deposit of Ravichandra	0.51	Deposit
6	Gas deposit paid to AIMS Oxygen	0.13	Deposit
7	Gujarat Synthwood Ltd.	10.64	Capital in nature
8	J K Industries Ltd.	0.78	Deposit
9	Dr. Reddy's Laboratories Ltd.	0.63	Deposit
10	Mrs. Sunita Gupta	0.11	Deposit
11	Jai Research Foundation	0.11	Deposit
12	DHL Express (India) Pvt. Ltd.	0.10	Deposit
13	Less than Rs. 10000	0.94	Deposit
	TOTAL	17.15	

37. Out of the above, the ld.counsel for the assessee contended before us that the amount of Rs.10.64 lakhs claimed as bad debts in relation to Gujarat Synthwood Ltd. at point no.7 is not being contested before us for claiming any sort of relief; that, it is only with respect to the balance amount of Rs.6.51 lakhs that the assessee is seeking relief in terms of claiming the same to be in the nature of business advance allowed as business loss under section 28 of the Act, in terms of decision of Hon'ble jurisdictional High Court in the case of Abdul Razak & Co. (supra).

38. We have considered the contentions of the ld.DR, and also that pointed out by the AO that the amounts pertaining to business

advance need verification, and have also taken note of counter arguments made by the ld.counsel for the assessee that the amounts in challenge being very small amounts, pertaining to 12 parties, amounting in all to Rs.6.15 lakhs, and the issue being very old and the nomenclature of its accounts itself reflecting the nature of their balance, the issue needs no reconsideration for verification at the end of the AO.

39. Considering the arguments by both the parties, we find merit in the contention of the ld.counsel for the assessee, and do not consider it fit to restore the issue back to the AO for verification of the facts, whether the impugned amounts represent the business advances. The nomenclature /description of te amounts as "*deposit*" and the fact that they relate to several parties involving small amounts , therefore considering the materiality of the amount involved ,it is not considered fit to seek verification of the fact by the AO noting that it is a very old appeal pertaining to A.Y 10-11.Accepting, therefore, the fact that these advances were in the nature of business advance, and considering the decision of jurisdictional High Court in the case of Abdul Rasak & Co. (supra), we hold that the assessee be allowed claim of Rs.6.51 lakhs as business loss in terms of section 28 of the Act.

40. For the sake of completion, we may state that the assessee has not contested its original claim of these amounts written off being in nature of bad debts written off in terms of section 37(1) of the Act. Therefore, it is only the alternate claim of the assessee of the allowance of its amount in all to Rs.6.51 lakhs out of the total claim of Rs.17.15 lakhs, as business loss under section 28 of the Act, that is being allowed to the assessee.

Ground No.9 and 10 accordingly are partly allowed as per the above terms.

41. Ground No.11 raised by the assessee reads as under:

> *"Ld. DRP/ AO erred in law and on facts in confirming disallowance made of Rs.74, 09, 818/- on account of excess claim of depreciation. Ld. DRP ought to have allowed depreciation as claimed by the appellant notionally reduced by AO on WDV worked out by thrusting depreciation not claimed in A Y 2001/02. It be so held now."*

42. The issue, as is evident from the perusal of the above grounds relates to disallowance of excess depreciation claimed by the assessee, the contention of the ld.counsel for the assessee before us was that the issue has been consistently decided against the assessee in the preceding years by the ITAT, though he relied heavily on submissions made before the Revenue, in this regard.

43. Having said so, we now proceed to bring out the facts relating to the issue before us.

44. As transpires from the order of the AO, the assessee had claimed depreciation of Rs.34,56,52,182/- in the return of income for the impugned year, A.Y 2010-11. However in Asst.Year 2001-02 the assessee had not claimed deprecation. In the assessment order for Asst.Year 2001-02, the depreciation was thrust upon the assessee and confirmed by the ITAT. The assessee however continued to claim depreciation on its written down value without deducting depreciation allowed in Asst.Year 2001-02. Accordingly, the AO worked out the allowable depreciation for the impugned year, after considering the depreciation allowed to the assessee in Asst.Year 2001-02 of Rs.33,82,42,364/-, the excess depreciation claimed of Rs.74,09,818/- was accordingly disallowed.

45. We have gone through the order of the ITAT in the case of the assessee pertaining to Asst.Year 2009-10 in IT(TP) No.1108/Ahd/2017 dated 12.7.2022, and we find that identical issue was dealt by the ITAT at para 52 to 54 of its order, wherein the Tribunal noted that the assessee has been disallowed excess claim of depreciation on account of depreciation thrust upon it in Asst.Year 2001-02 on asset, on which it had not claimed depreciation in the said year by the ITAT in Asst.Year 2006-07, 2008-09 and 2009-10 and even Asst.Year 2005-06. Further taking note of the admission of the ld.counsel for the assessee that identical claim of excess depreciation has been disallowed in the preceding years by the ITAT, we have no hesitation in confirming the impugned disallowance of excess depreciation amounting to Rs.74,09,818/-.

Ground No.11 of the appeal is dismissed

46. Ground No.12 raised by the assessee reads as under:

> *"Ld. AO erred in law and on facts in adding disallowance made u/s 14 A of Rs. 37,03,505/- to the total income computed u/s 115JB of the Act."*

47. A perusal of the above ground reveals that the issue raised relates to the adjustment made to the book profits of the assessee for the purpose of paying taxes thereon in terms of provisions of section 115JB of the Act on account of disallowance on expenses made under section 14A of the Act.

48. The ld.counsel for the assessee contended before us that this issue stands covered in favour of the assessee by the decision of the Special Bench in the case of ACIT V. Vireet Investment P.Ltd., (2017) 82 taxmann.com 415 (Del-Trib). He further pointed out that there are various decisions of the jurisdictional High Court also on this

issue in favour of the assessee. The ld.DR was unable to controvert the above contentions of the ld.counsel for the assessee, though, he relied heavily on the order of the ld.DRP/AO.

49. Having said so, we now proceed to bring out the facts relating to the case.

50. In the assessment framed in the present case, the AO had disallowed expenses relating/pertaining to the earning of exempt income in terms of provisions of section 14A of the Act amounting to Rs.37,03,505/-. This disallowance made in the computation of income as per the provisions of the Act, was added back to the book profits of the assessee for the purpose of paying taxes on the book profits of the assessee in terms of provisions of section 115JB of the Act, and taxes levied thereon. It is, this, adjustment made to the book profits of the assessee, which the assessee had challenged before us.

51. In view of various courts including Special Bench of the ITAT in the case of Vireet Investment P.Ltd. (supra) and other decisions of Hon'ble jurisdictional High Court, which have remained uncontroverted before us, which have consistently held that no adjustment to the book profits is permissible on account of disallowance of expenses made under section 14A of the Act in terms of provisions of section 115JB of the Act, we have no hesitation in deleting the disallowance made in the present case on identical facts. The AO is directed to delete the adjustment so made to the books profits on account of disallowance of expenses under section 14A of the Act.

Ground No.12 raised by the assessee is allowed.

52. Ground No. 13 & 14 read as under:

> *"13. The ld.AO erred in law and on facts in making reference to the Transfer Pricing Officer. Under the facts and circumstances of the case, there was no reason to interfere with the payment mad4e by the appellant to Associate Enterprises for services availed making any upward adjustment.*
>
> *14. The ld.AO erred in law and on facts in making reference to the Transfer Pricing Officer u/s.92C(3) r.w.s.. 92CA (1) of the Act without providing an opportunity of being heard to the appellant."*

53. No arguments were made vis-a-vis ground No 13 & 14 raised before us. Therefore the same are dismissed.

Ground of appeal No.15 & 16, against the levy of interest u/s 234B/C/D of the Act, and against initiation of penalty u/s 271(1)(c) of the Act, being consequential and premature respectively are not being dealt with by us.

54. In effect, the appeal of the assessee is partly allowed in the above terms for statistical purpose.

Order pronounced in the Court on 26th April, 2024 at Ahmedabad.

Sd/-	Sd/-
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 26/04/2024