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IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD "D" BENCH

(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)

ITA. No: 2369/AHD/2010
(Assessment Year: 2007-08)

Shri Dinesh Mills Limited padre Road, P.O. Box No. 2501, Vadodara-390020	**V/S**	**The ACIT Circle-4, Baroda**
(Appellant)		**(Respondent)**

ITA. Nos: 2313 & 2504/AHD/2011
(Assessment Year: 2008-09)

Shri Dinesh Mills Limited padre Road, P.O. Box No. 2501, Vadodara-390020	**V/S**	**The ACIT Circle-4, Baroda**
The ACIT Circle-4, Baroda	V/S	**Shri Dinesh Mills Limited padre Road, P.O. Box No. 2501, Vadodara-390020**
(Appellant)		**(Respondent)**

ITA. No: 2001/AHD/2012 & C.O. No. 191/Ahd/13
(Assessment Year: 2009-10)

The DCIT Circle-4, Baroda	**V/S**	**Shri Dinesh Mills Limited padre Road, P.O. Box No. 2501, Vadodara-390020**
Shri Dinesh Mills Limited	V/S	**The DCIT Circle-4, Baroda**

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padre Road, P.O. Box No. 2501, Vadodara-390020		
(Appellant)		**(Respondent)**

PAN: AADCS 3115Q

Appellant by : Shri S. N. Soparkar & Parin Shah & & K.D. Shah, A.R.
Respondent by: Shri Pradip Kumar Majumdar, Sr.DR

(आदेश)/ORDER

Date of hearing : 04 -04-2017
Date of Pronouncement : 10 -04-2017

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. ITA No. 2369/Ahd/2010 is appeal by the Assessee preferred against the order of the Ld. CIT(A)-III, Baroda dated 14.05.2010 pertaining to A.Y. 2007-08. ITA Nos. 2313 & 2504/Ahd/2011 are cross appeals by the assessee and the revenue preferred against the order of the ld. CIT(A)-III, Baroda dated 26.07.2011 pertaining to A.Y. 2008-09. ITA No. 2001/Ahd/2012 is the appeal by the revenue preferred against the order of the ld. CIT(A)-III, Baroda dated 29.06.2012 pertaining to A.Y. 2009-10 and C.O. No. 191/Ahd/2013 is by the assessee preferred against the very same order of the ld. CIT(A)-III, Baroda for A.Y. 2009-10.

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2. This bunch of appeals have common issues, therefore, they were heard together and are disposed of by this common order for the sake of convenience.

ITA No. 2369/Ahd/2010 Assessee's appeal for A.Y. 2007-08.

3. The only surviving grievance of the assessee relates to the disallowance of Rs. 31,87,067/- made by A.O. invoking provision of section 14A read with Rule 8D.

4. In the first round of litigation, this issue was partly decided in favour of the assessee and partly in favour of the revenue. The assessee through the miscellaneous application prayed for recalling the order of the Tribunal so far as it was against the assessee and the Tribunal vide M.A. No. 104/Ahd/2014 held as under:-

> *4. We have heard the rival submissions and perused the material on record and have also gone through the Miscellaneous Application. With respect to disallowance u/s, 14A in ITA No. 2369/Ahd/2010, it is seen that for the year under consideration being A.Y. 2007-08, the disallowance u/s. 14A has been made by following the provisions of Rule 8D. We further find that Hon'ble Gujarat High Court in Assessee's own case is A.Y. 2006-07 while deciding the Special Civil Application No. 15726 of 2010, has held that provisions of Rule 8D are applicable from A.Y. 2008-09 and is not retrospective. Considering the aforesaid fact, we are of the view that there is an apparent mistake in the order of Tribunal and therefore recall the order in ITA No. 2369/Ahd/2010 for a limited purpose to decide the issue with respect to disallowance u/s. 14A of the Act. The Registry is directed to fix the hearing the appeal in due course.*

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5. The revenue preferred an appeal before the Hon'ble High Court of Gujarat in so far as the part which has been decided against the revenue and the Hon'ble Jurisdictional High Court was seized with the following substantial question of law in Tax Appeal No. 769 of 2015.

1. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law and on facts in reversing the order of the Commissioner of Income Tax (Appeals) deleting disallowance made by the Assessing Officer on total investment made in shares of subsidiary company?*
2. *Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law and on facts in holding that the investment made for the purchase of shares of subsidiary company was not a legitimate business activity of the appellant?*

6. After considering the facts in totality, the Hon'ble Jurisdictional High Court observed as under:-

> *7. Before us learned counsel Shri Soparkar for the assessee submitted that the assessee had sizeable interest free funds for investment which were utilized for investment in the subsidiary company. The Assessing Officer as well as the Tribunal committed a serious error in disallowing the same. Certain borrowings were made during earlier assessment years. Such funds were invested for business purpose. Deduction of interest under section 36(1)(iii) of the Act was allowed. He relied on the following decisions of this Court:*
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> 1) *Commissioner of Income tax-II v. Hitachi Home and Life Solutions (I) Ltd. reported in (2014) 41 taxmann.com 540 (Gujrat).*
> 2) *Commissioner of Income tax v. Rgghuvir Synthetics Ltd. reported in (2013) 354 ITR 222 (Guj).*

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8. *On the other hand learned counsel Shri Parikh supported the view of the Tribunal contending that the assessee failed to demonstrate that interest free funds were available for diversion to sister concern. The principle laid down by the Supreme Court in case of S.A.* ***Builders Ltd. v. Commissioner of Income-tax (Appeals) and another*** *reported in (2007) 288 ITR 1 (SC) would not apply.*

9. *Facts emerging from the record are quite clear. The assessee had purchased shares of a subsidiary company by investing sum of Rs.7.86 crores. In view of the Assessing Officer, there had to be disallowance of interest matching to such sum since interest bearing funds were diverted for such purpose. Firstly, we are unable to see the rationale behind such approach. As noted, foundational query of the Assessing Officer to the assessee in this background was that the assessee has not charged interest on such investment in share. The assessee was therefore, asked to show cause why interest' should not be charged on investment. Upon perusal of the order of assessment, we do not find that the case of the Assessing Officer was that investment made by the company in the subsidiary by purchase of shares was in fact, a loan in disguise. When even 'according to the Assessing Officer there was no advance made by the assessee to the subsidiary, the question: of charging interest on the investment made, would not arise. The Assessing Officer in our opinion therefore, clearly misdirected himself by examining the question of charging interest on investment by the assessee company in the subsidiary company. Entire issue could be looked from a different angle had the premise of Assessing Officer been that in disguise of investment, what the assessee had done was to advance the sum to sister concern without charging interest. That was not even the case of the Assessing Officer.*

10. *It was in this background the assessee had conveyed to the Assessing Officer that it had purchased shares with business prudence in mind. Merely because during the current year such shares did not yield any return would not imply that in future also no return would accrue. Quite apart from this angle, even the*

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question of investment in subsidiary company has not been properly examined by the Assessing Officer. Merely because the assessee company had interest bearing funds for its capital investment, claiming deduction under section 36(l)(iii) of the Act would not automatically imply that any diversion of funds without interest to a subsidiary would automatically give rise to disallowance. So much has been discussed by the Supreme Court in case of S.A. ***Builders*** *Ltd.(supra). The assessee had demonstrated before the Assessing Office that it had sizeable net profit and availability of interest free funds for investment in subsidiary company.*

11. *In case of* ***Raghuvir Synthetics ltd*** *(supra), Division Bench Of this Court following the decision of Supreme Court in case of* ***S.A. Builders*** *Ltd.(supra), upheld the view of the Tribunal rejecting the appeal of the Revenue on the ground that substantial interest free funds were available, the Commissioner and the Tribunal also considered the question of business expediency. In case of* ***Hitachi Home and Life Solutions (I) Ltd*** *(supra), the Court held and observed as under:*

> *"4. Learned counsel Ms. Mauna Bhatt has fervently urged that the Tribunal had held the funds to be mixed funds and therefore, disallowances had been rightly made by the Assessing Officer, which were not to be disturbed. The Tribunals holding that Rule 8D could not have been invoked is contrary to its own finding, and therefore, deletion needs to be quashed. Reliance is placed on the decision of Delhi High Court in case of* ***Maxopp Investment Limited v. Commissioner of Income Tax,*** *reported in [2012] 347 ITR 272 [Delhi], wherein, introduction of Rule 8D is held prospective in nature. However, it has been held therein that the Assessing Officer if is not satisfied with the correctness of the claim of the assessee in respect of the expenditure, prior to the introduction of Rule 8D, is entitled under the law to calculate the amount and determine the amount of expenditure in relation to the income.*

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5. On thus having heard learned counsel and having considered at length the material on record, we are of the opinion that no interference is desirable.

6. As can be noted from the "elaborate notings of the Assessing Officer itself, the interest free funds with the assessee was to the tune of Rs. 1.56 Crores, even if the outstanding loan of Rs. 2077.06 lacs as on 31st March 1999 is taken into account. Since we are only concerned with a sum of Rs. 18.38 lacs disallowances of which has been made under section 14A of the Act; even if the Tribunal has held that this was a question of mixed funds, the further reasonings given by the Tribunal cannot be ignored nor can earlier version be viewed in isolation. These findings cannot be said to be in consonance with the findings of the Assessing Officer. We also hold that the CIT [A] and the Tribunal both have specifically held the said amount has not been rightly disallowed since the same had been expended from interest free funds, though spent for earning exempt dividend income. It is not the question of the total sum of Rs. 471 lacs, but, a limited sum that has been spent for earning the exempt income, therefore, as rightly held, when there was interest free funds available with the assessee, there does not arise a question of disallowing expenditure under Section 14A of the Act."

12.The Tribunal's finding that the investment made by the assessee company for purchase of shares in the subsidiary company was not a legitimate business activity, was in fact, an expansion beyond what the Assessing Officer had himself envisaged. It was not even the case of the Revenue that investment made by the assessee in subsidiary company was for some illegitimate purpose or a mere device to divert its tax bearing income.

13. In view of above, we answer the question in favor of assessee, allow the appeal and reverse the judgement of the Tribunal on this issue.

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7. A perusal of the aforementioned judgment of the Hon'ble Jurisdictional High Court qua the facts in issue before us clearly tilts the balance of convenience in favour of the assessee and against the revenue. Since, the issue is now well settled by the decision of the Hon'ble Jurisdictional High Court (supra), we direct the A.O. to delete the disallowance of Rs. 31,87,067/-. This ground of the appeal is allowed.

8. The next ground relates to the disallowance of repairs for water proofing and replacement of corrugated sheets aggregating to Rs. 25.11 lacs treating them as capital expenses.

9. The ld. Senior Counsel fairly conceded that this issue is not arising out of the order of the First Appellate Authority and the same is accordingly dismissed.

10. In the result, the appeal filed by the Assessee is partly allowed.

ITA No. 2504/Ahd/2011 Revenue's appeal for A.Y. 2008-09

11. The first grievance of the revenue is in relation to the deletion of the addition of Rs. 74,76,495/- made u/s. 36(1)(iii) of the Act being interest on investment made in the subsidiary company.

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12. This issue has been dealt elaborately in ITA No. 2369/Ahd/2010 (supra) qua ground no. 1 of that appeal. For our detailed discussion therein, we do not find any merit in this ground of the appeal and the same is dismissed.

13. The next grievance of the revenue relates to the deletion of the addition of Rs. 68.96 lacs made by A.O. treating the same to be capital expenditure.

14. During the course of the scrutiny assessment proceedings, the A.O. noticed that the assessee has made a payment of Rs. 81.14 lacs towards control system for heat setting and stretching machine. The assessee was requested to show cause as to why the said expenditure should not be treated as capital in nature. The assessee filed a detailed reply vide its letter dated 13.12.2010 to justify its claim of the said expenditure as revenue in nature. The detailed reply of the assessee is incorporated by the A.O. at pages 6 to 10 of his assessment order. However, the said reply did not find any favour with the A.O. who was of the firm belief that a new system was installed after changing the new control system and, therefore, treated the amount of Rs. 68.96 lacs as capital in nature.

15. Assessee carried the matter before the ld. CIT(A) and vehemently contended that no new asset came into existence, the entire expenditure has been incurred for the up-gradation of the control system as the spare parts for the old system as well as technical support was not available which prompted the assessee to go for the new system. After considering the facts and the submissions, the ld. CIT(A) observed that the reliance

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placed by the A.O. on the decision of the Hon'ble Supreme Court in the case of Saravana Spinning Mills (P) Ltd. 293 ITR 201 was misplaced inasmuch as in that case the Hon'ble Supreme Court has held that if an independent machine is replaced then it will amount to capital expenditure. The ld. CIT(A) further observed that the Hon'ble Supreme Court in the said case has also held that if part of a machine which is vital for its working is replaced then the same will amount to current repairs. The ld. CIT(A) accordingly directed the A.O. to delete the impugned disallowance.

16. Before us, the ld. D.R. could not point out any factual error in the findings of the First Appellate Authority.

17. After giving a thoughtful consideration to the factual matrix qua the findings of the First Appellate Authority, in our considered opinion, by incurring the impugned expenditure no new asset has come into existence. Therefore, there is no error or infirmity in the findings of the ld. CIT(A). This ground is accordingly dismissed.

18. The next ground relates to the deletion of the addition of Rs. 27.67 lacs out of Rs. 31.39 lacs made by A.O. treating the same as capital expenditure.

19. During the course of the assessment proceedings, the assessee was asked to furnish the details of repairs to building amounting to Rs. 66.18 lacs. The requisite details were furnished by the assessee. On perusal of the same,

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the A.O. noticed that the assessee has debited expenditure on account of plastering, RCC work, fencing, flush system, etc. aggregating to Rs. 34,88,201/-. The assessee was show caused to explain why said expenditure should not be held to be capital in nature. In its reply, the assessee strongly submitted that these expenses are part of the current repairs of the company and no new assets have been created as a result of the said expenditure. The reply of the assessee did not find any favour with the A.O. who was of the firm belief that the reasons given by the assessee cannot be considered good for allowing the expenditure as current repairs as the replacements/repairs have given enduring benefit to the assessee. Drawing support from the decision of the Hon'ble Supreme Court in the case of Saravana Spinning Mills (P) Ltd. 293 ITR 201, the A.O. made the addition of Rs. 31.39 lacs.

20. Assessee carried the matter before the ld. CIT(A) and reiterated what has been stated before the lower authorities.

21. After considering the facts and the submissions, the ld. CIT(A) held as under:-

> *7.1 I have considered the contentions of the A.O. and the submissions made by the appellant. The A.O., while making disallowance of expenditure on account of plaster work and RCC work has not discussed the details of such expenditure. He has simply held that if there has been wear and tear of an item like RCC work, plastering work etc., over a number of years and ultimately they are replaced, then such replacement cannot be recorded as current expenditure. He has again placed reliance on the decision of Delhi High Court in the case of Modi Spinning*

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and Weaving Mills Co. Ltd. (200 ITR 544) and decision of Hon'ble Supreme Court in the case of Saravana Spinning Mills Pvt. Ltd. (293 ITR 201).

7.2 I have gone through the details of such expenditures submitted by the appellant during the course of hearing of appeal proceedings. The appellant has also submitted copies of bills for such expenditure. The details are as follows;

Details of Building Repairs- Rs. 66,18,409/-

Sr. No.	*Name of Party*	*Particulars*	*Amount (Rs.)*
1.	*Jaiswal & Sons*	*Outside plaster at Ankleshwar Colony*	*1,35,133*
2.	*Super Products*	*Fencing work at Ankleshwar Factory*	*2,61,632*
3.	*AOS Systems*	*Sanitary Items*	*1,10,137*
4.	*Jaiswal & Sons*	*Civil work at Ankleshwar Blocks*	*1,71,363*
5.	*-do-*	*Plaster work at Ankleshwar colony*	*1,94,147*
6.	*-do-*	*Plaster work at Ankleshwar plant*	*1,58,509*
7.	*S.S. Gorecha*	*Dismantling of RCC work etc.*	*4,43,240*
8.	*Jaiswal & Sons*	*Painting work at Ankleshwar colony*	*1,68,883*
9.	*Rockman Builders*	*Plastering work at Ankleshwar office Building*	*1,73,908*
10.	*Usha Infinity Construction Co. Pvt. Ltd.*	*Civil work at Humidification Plant*	*1,97,692*

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11.	*Pramod Sharma*	*Exterior painint at Ankleshwar factory*	*4,31,690*
12.	*Jaiswal & Sons*	*Provision for Plaster work*	*2,05,666*
13.	*Rockman Builders*	*Provision for repairs to R & D toilets*	*1,41,262*
14.	*-do-*	*Provision for staff quarter repairs*	*3,27,104*
15	*Jaiswal & Sons*	*Plaster work at R& D*	*3,77,935*
	Total		*34,88,201*
16	*Others –Les than Rs. 1 lakh each* *Grand Total*		*31,30,208* *66,18,409*

7.3 A perusal of the details submitted shows that the fencing work at Ankleshwar factory is a new asset and hence, this expenditure is in the nature of capital expenditure. Similarly, the bill of AOS system shows that the expenditure is for new auto flush system for urinals etc. Hence, the same is also capital expenditure in nature as a new asset has been acquired. Other expenditures are in the nature of repair of plaster of walls, beams and columns paintings etc. By virtue of these expenditures, no new asset has been acquired, rather parts of old building have been repaired. In such circumstances, these are held to be in the nature of current repairs and allowable u/s 31(i). Accordingly, out of addition made by the A.O. of Rs. 31,39,381/-, an amount of Rs. 3,71,819/- is sustained and the balance addition is directed to be deleted. The depreciation allowable by A.O. in the assessment order of additions so deleted, shall be withdrawn at the time of giving effect of this order.

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22. We have given a thoughtful consideration to the findings of the First Appellate Authority (supra). We have also gone through the decision of the Hon'ble Supreme Court in the case of Saravana Spinning Mills (P) Ltd. (supra) relied upon by the A.O. In our considered opinion, the decision of the Hon'ble Supreme Court relied upon by the A.O. if considered in the light of the facts of the case in hand, is more in favour of the assessee then the revenue. The Hon'ble supreme Court in the said case has laid down the ratio that *"the basis test to find out as to what would constitute current repairs is that the expenditure must have been incurred to "preserve and maintain" an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage".* A similar view has been taken by the Hon'ble High Court of Gujarat in the case of Hotel Oasis (Surat) (P.) Ltd. in Tax Appeal No. 289 of 2012.

23. The Hon'ble Jurisdictional High Court of Gujarat in the case of Manoj B. Mansukhani in Tax Appeal No. 941 of 2010 was, interalia, seized with the following question of law:-

> *(C) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of disallowance of capital expenses amounting to Rs. 17,45,865/- ?*

24. And the Hon'ble High Court held as under:-

> *12. With respect to disallowance of Rs.17,45,865/- claimed by the assessee by way of revenue expenditure and instead treating the same as capital expenditure by the revenue authorities, we find, that the issue arises in the following factual background. The assessee had carried out; repairs of its dumpers by replacing the*

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body of the dumpers and claimed such expenditure as current repairs. The Assessing Officer was of the opinion that the expenditure was capital nature, disallowed the claim of the assessee for deduction thereof. The Tribunal following the decision of this Court in the case of Commissioner of Income Tax Vs. Saravana Spinning Mills P. Ltd., 293 ITR 201 allowed" the assessee's appeal and granted deduction as claimed. The Tribunal noted that the assessee was having its own trucks and dumpers which were being used for the local transportation to shift-goods from one place to another. The assessee had to replace the body of dumper and such expenditure was claimed as revenue expenditure. The Tribunal taking note of Section 31 of the Income Tax Act, 1961 firmed the opinion that such expenditure would be in the nature of current repairs and thus, allowed the assessee's appeal on this aspect.

13. It is not in dispute that the vehicles in question were owned by the assessee and were being used for transportation of the goods in the course of its business. It is equally not in dispute that for carrying out repair works, the assessee had changed body of the dumper. The expenditure incurred in such repair was claimed by way of revenue expenditure or in the nature of current repairs. Section 31(1) of the Act reads as under:-

"31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed-(i) the amount paid on account of current repairs thereto;"

4. In case of Saravana Spinning Mills P. Ltd. (supra), the said provision came up for consideration before the Apex Court in background of the facts where the assessee had replaced the ring frames of its machineries installed in the textile mi Us while holding that such repair would form part of the current repairs, the Apex Court observed as under:-

"13. An allowance is granted by clause (i) of Section 31 in respect of amount expended on current repairs to machinery, plant or furniture used for the purposes of business, irrespective of whether the assessee is the owner of the

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assets or has only used them. The expression "current repairs" denotes repairs which are attended to when the need for them arises from the viewpoint of a businessman. The word "repair" involves renewal. However, the words used in Section 31 (i) are "current repairs". The object behind Section. 31 (i) is to preserve and maintain the asset and not to bring in a new asset. In our view, Section 31 (i) limits the scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to the concept of "current repairs". All repairs are not current repairs. Section 37(1) allows claims for expenditure which are not of capital nature. However, even Section 37(1) excludes those items of expenditure which expressly falls in Sections 30 to 36. The effect is to delimit the scope of allowability of deductions for repairs to the extent provided for in Sections 30 to 36. To decide the applicability of Section 31 (i) the test is not whether the expenditure is revenue or capital in nature, which test has been wrongly applied by the High Court, but whether the expenditure is "current repairs". v/The basic test, to find out as to what would constitute current repairs is that the expenditure must have been incurred to "preserve and maintain" an already existing asset, and the object o the expenditure must not be to bring a new asset into existence or to obtain a new advantage."

15. Bearing in mind the ratio of the decision of the Apex Court in the case of Saravana Spinning Mills P. Ltd. (supra) and coming back to the facts of the present case, it can be seen that by carrying out the repairs, the assessee did not bring into existence any new assets but was required to expend amount to preserve and maintain the asset already in existence.

25. Considering the facts in totality in the light of the aforementioned judgments, we decline to interfere with the findings of the ld. CIT(A) so far as it relates to the deletion of the addition of Rs. 27,67,562/- and for the reasons given hereinabove. We set aside the findings of the ld. CIT(A) so far

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as his decision in upholding disallowance of Rs. 3,71,819/- is concerned and the same is directed to be deleted. This will dismiss ground no. 3 of Revenue's appeal and allow ground no. 3 of Assessee's appeal in ITA No. 2313/Ahd/2011.

26. The next ground taken by the revenue relates to the deletion of the addition of Rs. 2.38 crores made by A.O. by invoking provisions of section 40(a)(ia) of the Act.

27. While scrutinizing the return of income, the A.O. noticed that the assessee has paid an amount of Rs. 238.46 lacs to its various dealers as incentives. The A.O. further found that the assessee has not deducted tax at source as per the provisions of the law. Invoking the provisions of section 40(a)(ia) of the Act, the A.O. disallowed the sum of Rs. 2.38 crores.

28. Assessee carried the matter before the ld. CIT(A) and vehemently contended that the assessee was not liable to deduct tax at source as the impugned payments made by the assessee were in the form of incentives and not commission. It was explained that the incentives have been given on the purchases made by the dealers and not for the sales made by them and such incentives are given by the assessee company to the dealers directly on principal to principal basis.

29. After considering the facts and the submissions, the ld. CIT(A) was of the opinion that the views of the A.O. are not correct. The ld. CIT(A) observed

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that such incentives are paid to the wholesalers when the minimum meters mentioned for the entire period of the claim is achieved by them. The ld. CIT(A) concluded by holding that the dealers are getting incentives not on the basis of sales made by them but on the basis of orders placed with the appellant. Hence, no TDS required to be made by the assessee company of such payment. The ld. CIT(A) accordingly directed the A.O. to delete the impugned addition.

30. The ld. D.R. strongly supported the findings of the A.O. Per contra, the ld. counsel for the assessee relied upon the findings of the ld. CIT(A). Strong reliance was place on the decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of Gujarat Tea Processors & Packers Ltd. 28 taxmann.com 187.

31. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. Senior Counsel. The Hon'ble High Court of Gujarat on identical set of facts had considered the following and held accordingly:-

> *"Trade discount- Assessment Year 2006-07- Assessee was a manufacturer and seller of tea- Under sales promotion scheme introduced by assessee, based on quantity purchased, retailer was given discount-Assessing Officer issued a notice under section 148 to reopen assessment on ground that discount given by assessee was nothing but commission on which tax was to be deducted at source under section 194C or 194H and since it was not done a disallowance under section 40(a)(ia) was to be made whether instant was a case of contract for*

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goods and is neither a contract for service, nor is it a case of paying of commission or brokerage- Held, yes- Whether, therefore, it was covered neither under section 194C nor under section 194H- Held, yes [Paras 15 & 18] [In favour of assessee].”

32. The Hon’ble Supreme Court in the case of Ahmedabad Stamp Vendors Association 348 ITR 378 had held that the discount given to stamp vendors for purchasing stamps in bulk quantity was in nature of cash discount in transaction of sale, and, therefore, section 194H has no application to that transaction.

33. Considering the facts in totality in the light of the decisions of the Hon’ble Jurisdictional High Court (supra) and the Hon’ble Supreme Court (supra), we do not find any error or infirmity in the findings of the ld. CIT(A). This ground is accordingly dismissed.

34. In the result, the appeal filed by the Revenue is dismissed.

ITA No. 2313/Ahd/2011 Assessee’s appeal for A.Y. 2008-09

35. The first grievance of the assessee relates to the disallowance made u/s.14A read with Rule 8D amounting to Rs. 22.82 lacs.

36. This issue has been elaborately discussed by us in ITA No. 2369/Ahd/2010 for A.Y. 2007-08 qua ground no. 1 of that appeal. For our detailed

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discussion therein, no disallowance is to be made so far as claim of expenditure on account of interest is concerned.

37. However, at the same time, in our considered opinion, a reasonable disallowance need to be made so far as administrative expenditure are concerned, and, therefore, we direct the A.O. to disallow a sum of Rs. 20,000/- which should meet the ends of justice. This grievance is accordingly partly allowed.

38. The next grievance relates to the disallowance of Rs. 3,71,819/- being expenditure treated as capital in nature.

39. An identical issue has been considered by us in revenue's appeal in ITA No. 2504/Ahd/2011 qua ground no. 3 of that appeal. For our detailed discussion therein, the A.O. is directed to delete the addition of Rs. 3,71,819/-. This grievance is accordingly allowed.

40. In the result, the appeal filed by the Assessee is partly allowed.

ITA No. 2001/Ahd/2012 Revenue's appeal for A.Y. 2009-10

41. The first grievance relates to the deletion of the addition of Rs. 89.71 lacs being interest on the investment made in subsidiary company.

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42. This issue has been considered by us in detail in assessee's appeal in ITA No. 2369/Ahd/2010 for A.Y. 2007-08. For our detailed discussion therein, this grievance of the revenue is dismissed.

43. The next grievance relates to the deletion of the addition of Rs. 2.78 crores made by the A.O. u/s. 40(a)(ia) of the Act.

44. A similar issue has been considered by us in ITA No. 2504/Ahd/2011 for A.Y. 2008-09 qua ground no. 4 of that appeal. For our detailed discussion therein, this grievance is dismissed.

45. In the result, the appeal filed by the revenue is dismissed.

C.O. No. 191/Ahd/2013 for A.Y. 2009-10

46. The cross objection of the assessee relates to the disallowance made u/s. 14A read with Rule 8D.

47. A similar issue has been considered by us in ITA No. 2313/Ahd/2011 for A.Y. 2008-09 wherein we have directed the A.O. to restrict the disallowance to Rs. 20,000/ should meet the ends of justice. We, accordingly, direct the A.O. to restrict the disallowance to Rs. 20,000/- for the year under consideration also.

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48.In the result, the C.O. of the assessee is partly allowed.

Order pronounced in Open Court on 10 - 04- 2017

Sd/- Sd/-

(MAHAVIR PRASAD) **(N. K. BILLAIYA)**
JUDICIAL MEMBER True Copy **ACCOUNTANT MEMBER**
Ahmedabad: Dated 10/04/2017

Rajesh

Copy of the Order forwarded to:-
1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad