आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।

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

समक्ष श्री एन.एस.सैनी, लेखा सदस्य **एवं** श्री कुल भारत, न्यायिक सदस्य ।

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER And
SHRI KUL BHARAT, JUDICIAL MEMBER

1. आयकर अपील सं./I.T.A. No.1003/Ahd/2005 – A.Y. 2001-02
2. आयकर अपील सं./I.T.A. No.1055Ahd/2005 – A.Y. 2001-02

1.Gujarat Paguthan Energy Corpn.P.Ltd. "Chanakya House" Nr.Dinesh Hall Off Ashram Road Ahmedabad 2. ITO, Ward-4(1) Ahmedabad	**बनाम**/ Vs.	1.The Income Tax Officer Ward-4(1), Ahmedabad 2. Gujarat Paguthan Energy Corpn.P.Ltd., Ahd
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACG 7999 P		
(अपीलार्थी /**Appellants**)	..	(प्रत्यर्थी / **Respondents**)

Assessee by :	Shri Vimalendu Verma, CIT-DR
Revenue by :	Shri S.N.Soparkar, A.R.

सुनवाई की तारीख / **Date of Hearing**	06/05/2015
घोषणा की तारीख /**Date of Pronouncement**	19/06/2015

आदेश / O R D E R

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

These cross-appeals by the Assessee and the Revenue are directed against the order of the Ld.Commissioner of Income

Tax(Appeals)-VIII, Ahmedabad ('CIT(A)' in short) dated 31/01/2005 pertaining to Assessment Year (AY) 2001-02. These cross-appeals were heard together and are being disposed of by way of this consolidated order for the sake of convenience.

2. First, we take up the Assessee's appeal in ITA No.1003/Ahd/2005 for AY 2001-02. The assessee has raised the following concised grounds of appeal:-

> *"1. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in rejecting Ground No. 1 of the appellant's appeal before him vide which it had challenged the* ***validity*** *of the assessment order impugned thereof, inter alia, for the reason that the reassessment proceedings in question had been initiated by the Assessing Officer* ***by means of a Notice u/s. 148 which was itself issued without jurisdiction.***
>
> *2.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in failing to appreciate:*
>
> *(a) that vide Ground No. 2.1 of its appeal before him, the appellant had challenged* ***the very levy*** *of Minimum Alternate Tax u/s. 115JB.*
>
> *(b) that it was only vide Ground No. 2.2 of its appeal before him that the appellant had contested (and that too, without prejudice to its challenge to the very levy of the Minimum Alternate Tax vide Ground No. 2.1) the adjustment by way of addition of Rs. 21,80,58,244 debited to the appellant's Profit and Loss Account on account of Provision For Doubtful Debts, in computing the appellant's book profit u/s. 115JB.*

2.2 The learned CIT(A) has accordingly grossly erred in proceeding as if the appellant's dispute related ***merely*** *to the quantum of the book profit and in accordingly* ***omitting to render his decision on the appellant's challenge to the very levy of the Minimum Alternate Tax u/s. 115JB*** *considering* ***also*** *the peculiar facts of the appellant's case before him.*

3.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in failing to appreciate:

(a) that once he had categorically held vide para 2.6 of the Appellate Order that in view of the decision of the Supreme Court in Apollo Tyres' case (255 ITR 273), the ***only*** *issue to be considered in the appellant's present case was as to whether the adjustment by way of addition of Rs.21,80,58,244 on account of Provision For Doubtful Debts debited to the Profit and Loss Account could fall under any of the clauses (a) to (f) below the Explanation to sub-section (2) of Section 115JB, considering that the said amount on account of Provision For Doubtful Debts had been debited to the appellant's Profit and Loss Account* ***which had been audited*** *not only pursuant to the Companies Act, 1956 and the provisions of Section 44AB of the Income-tax Act, 1961, but further,* ***also for the specific purposes of Section 115JB*** *of the Income-tax Act, 1961 itself, all that he [i.e., the learned CIT(A)] could have done had* ***necessarily to be confined*** *to deciding as to whether the amount debited to the Profit and Loss Account on account of Provision For Doubtful Debts could be so adjusted under any of the clauses (a) to (f) of the Explanation below sub-section (2) of Section 115JB* ***and in particular, under clause (c) thereof as was done by the Assessing Officer;***

(b) that in terms of the ***very*** *ratio of the aforesaid decision of the Supreme Court in Apollo Tyres' case,* ***it was not open to him*** *to go behind the audited Profit and Loss Account and to dissect the aggregate amount of Rs.21,80,58,244 debited to the appellant's Profit and Loss Account on account of Provision For Doubtful Debts into:*

(1) Rs.48,12,701 for which, in his view, adjustment to the book profit was justified.

(2) Rs,1,16,25,712 for which, in his view, adjustment to the book profit was justified.

(3) Rs.20,16,19,831 for which, in his view, adjustment to the book profit was not justified.

3.2 The learned CIT(A) aught, accordingly, to have directed for the deletion of the adjustment in entire, instead of ordering for partial relief to the extent of Rs.20,16,19,831.

***4.1 Without prejudice to the foregoing,** in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred, even while recording his appreciation that adjustment **of the impugned nature** cannot be made under clause (c) of the Explanation below sub-section (2) of Section 115JB, by categorically observing as under on page 9 of the Appellate Order, in upholding a part of the adjustment to the extent of Rs.1,64,38,413 (aggregate of two items of Rs. 48,12,701 and Rs.1,16,25,712), instead of ordering for the deletion of the entire adjustment of Rs.21,80,58,244 made by the Assessing Officer (emphasis supplied):*

"2.7 My observation and finding in this respect is as under:
*(A) ..... Since the quantum of amounts payable by GEB are reduced, obviously the same cannot be said to be income accruing to the appellant company and **cannot be taken as liability as referred in 115JB(2) clause (c).... ... "***
5.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in deciding Ground No. 3.1 of the appellant's appeal before him reading as under, against the appellant:

> *"3.1 In law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in considering deduction for depreciation amounting to*

Rs.178,83,99,967 in the computation of the appellant's total income under the normal provisions of the Income-tax Act, 1961 *even though the appellant had not claimed deduction for the same and categorically stated, by way of a Note appended to its return of income, that it had opted not to claim for depreciation."*

5.2 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has further grossly erred in failing to appreciate that by no stretch of the imagination, ***the action of allowing deduction*** *for depreciation (which had not been allowed to an assessee because he had not made any claim for its deduction) could be regarded as* ***"assessing income which had escaped assessment",*** *which* ***alone*** *could be done while making an assessment pursuant to the provisions of Section 147.*

6. Without prejudice to the preceding ground, *in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred* ***in omitting to consider and decide*** *upon Ground No. 3.2 of the appellant's appeal before him reading as under:*

> ***"3.2 Without prejudice to the foregoing,*** *in law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in failing to consider that even if it was* ***ultimately*** *held that it was open to the learned Assessing Officer to consider deduction for depreciation u/s.32 in the computation of the appellant's total income for the present A.Y. 2001-02 even though it was anterior to A.Y. 2002-03 with effect from which Explanation 5 was inserted below clause (ii) of sub-section (1) of Section 32, since it was the admitted position that the appellant was entitled to deduction u/s.80-IA @ 100% of the profits derived from its business, such consideration of deduction for depreciation cannot be regarded as* ***actual*** *allowance of depreciation which alone can be taken into account for determining the* ***aggregate*** *amount of depreciation to which*

the appellant would be entitled on the assets in question in the subsequent years."

7. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the Assessing Officer's action of disallowing deduction of Rs.1,52,000 debited to the appellant's Profit and Loss Account on account of Earthquake Relief expenses, in the computation of the appellant's total income under the normal provisions of the Income-tax Act, 1961.

8. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in failing to appreciate that vide Ground No. 8 of its appeal before him the appellant had challenged ***the very levy*** *of interest amounting to Rs.2,27,573 u/s. 234A in the* ***peculiar*** *facts and circumstances of its case, and in not ordering for its deletion and instead, in observing that the remedy in the appellant's present case lay in making a waiver petition.*

9.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing Grounds No. 9.1 and 9.2 of its appeal before him reading as under:

> *"9.1 In law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in levying interest amounting to Rs.3,18,60,034 u/s.234B* ***even though that provision was not at all attracted to the appellant's present case.***
>
> *9.2* ***Without prejudice to the foregoing,*** *in law* ***and*** *in the facts and circumstances of the appellant's case, there was no warrant / justification for levying any interest U/S.234B."*

10.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing the appellant's Ground of Appeal No. 10 reading as under:

"10. In law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in levying interest amounting to Rs.19,53,907 u/s.234C even though interest amounting to ***only*** *Rs.2,35,740 was leviable under that provision."*

11. The appellant craves leave to add to, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

2.1. Assessee raised the following additional ground:

Appellant craves leave to raise this additional ground of appeal before the Hon'ble ITAT. This is a legal ground and therefore as per the decision of Hon'ble Supreme Court in the case of National Thermal Power (229 ITR 383) it can be raised before the Hon'ble ITAT.

1. *The appellant prays that on the facts and circumstances of the case and in law for the purpose of computing book profit u/s.115JB of the Act, the amount of bad debts written off against provision for bad and doubtful debts should be reduced if provision for bad debts is disallowed.*

Appellant craves leave to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of the hearing of the appeal.

3. Briefly stated facts are that the case of the assessee was reopened for assessment and the assessment u/s.143(3) r.w.s.147 of the Income Tax Act,1961 (hereinafter referred to as "the Act") was framed vide order dated 29/03/2004, thereby the Assessing Officer (AO in short) made disallowance of provision for bad debt and Revised Book Profit at Rs.3,09,44,61,667/-. The AO also made allowance of depreciation of

Rs.178,83,99,967/- although not claimed by the assessee. The AO made addition on account of wealth-tax of Rs.5,19,600/- and disallowance of claim of earth-quake relief expenses amounting to Rs.1,52,000/-. The assessee feeling aggrieved by the order of the AO, preferred an appeal before the ld.CIT(A), who after considering the submissions of the assessee partly allowed the appeal. While allowing the appeal, the ld.CIT(A) reduced the disallowance of provision for bad debt to Rs.1,64,38,413/- (Rs.21,80,58,244 – Rs.20,16,19,831). The ld.CIT(A) confirmed the allowance of depreciation though not claimed by the assessee. The ld.CIT(A) deleted the addition on account of wealth-tax of Rs.5,19,600/- made on account of wealth-tax and also confirmed the addition made on account of disallowance of earth-quake relief expenses of Rs.1,52,000/- and allowed the deduction claimed u/s.80G of the Act. However, the ld.CIT(A) in respect of levy of interest u/s.234-A, 234-B & 234-C of the Act, rejected the grounds of the assessee. Against the order of the ld.CIT(A), now both the Assessee and the Revenue are in cross-appeals before us. The assessee has filed a chart containing six grounds.

4. First ground (as per chart filed by the assessee during the course of hearing) is against the validity of reopening of the assessment by invoking the provision of section 147 of the Act. The ld.counsel for the assessee submitted that before the ld.CIT(A), one of the grounds was that the notice u/s.148 had been issued before the expiry of four years from

the end of the relevant assessment year and that this was not a case of mere change of opinion and also suffered from consideration of irrelevant issues at the cost of relevant issues. It is submitted that the statement of facts as submitted before the ld.CIT(A) was ignored. In support of the challenge against validity of notice u/s.148 of the Act, the assessee has placed reliance on the decision of Hon'ble Bombay High Court rendered in the case of Rallis India Ltd. vs. ACIT & Others in Writ Petition No.2514 of 2009. The reliance is also placed on the decision of the Coordinate Bench (ITAT "B" Bench Ahmedabad) rendered in the case of Intas Exports vs. The ACIT in ITA Nos.1819 & 1820/Ahd/2008 for AYs 2003-04 & 2004-05 respectively dated 30/07/2010. The ld.counsel for the assessee has also placed reliance on the judgement of Hon'ble Jurisdictional High Court rendered in the case of Vishwanth Engineers vs. ACIT, dated 11/04/2012 reported at (2012) 21 taxmann.com 5 (Guj.).

4.1. On the contrary, ld.CIT-DR supported the orders of the authorities below on this issue and submitted that in the original assessment, scrutiny was carried out on a limited issue, therefore it cannot be inferred from the records that the AO had applied his mind on the issue in appeal. He further submitted that the ld.CIT(A) has rightly rejected the ground raised by the assessee.

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The undisputed facts are that the reopening is made on the basis of the note enclosed with the return of income by the assessee. The submission of the assessee is that the assessee has not added provision for doubtful debt in working of the book profit relying on the judgement of Hon'ble Bombay High Court in the case of CIT vs. Echjay Forgings Pvt.Ltd. reported at 251 ITR 15. It is not disputed by the Revenue that the material on the basis of which re-opening of assessment was proposed was already before the assessing officer in the form of note. The ld.counsel for the assessee submitted that in view of the judgement of Hon'ble Jurisdictional High Court in the case of Vishwanth Engineers vs. ACIT reported at (2012) 21 taxmann.com 5 (Guj.), the AO should not have reopened the assessment. We find that the Hon'ble High Court in the said case held as under:-

"17. Therefore, if from the selfsame materials, the Assessing Officer forms a second opinion and reopens-the assessment merely on the ground that on-second thought, a different view is possible, such fact does not authorize him to reopen the assessment within the purview of Section 147/148 of the Act. In this connection, ***we*** *may profitably refer to the following observations made by the Supreme Court in the case of CIT v. Kelvirator of India Lid. [2010] 320 1TR 5617 187 Taxman 312. where the Court made the following observation on the scope of Section 147 of the Act:*

> *"5. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the assessing officer to make a*

back assessment, but in Section 147 of the Act (with effect from 1-4-1989), they are given a go-by and only one condition has remained viz. that where the assessing officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post--1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer.

8. We quote hereinbelow the relevant portion of Circular No. 549 dated 31-10-1989, which reads as follows:

"7.2. Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in Section 147.—A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled

and its omission from Section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended Section 147 to reintroduce the expression 'has reason to
believe' in the place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new Section 147, however, remain the same."
(emphasis supplied)
9. For the aforestated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."
(Emphasis supplied).

18. After applying the aforesaid principle to the facts of the present case, we are convinced that this is a case where the Assessing Officer has reopened the proceeding merely on the ground that from the material available, the view earlier adopted by him was erroneous one. Thus, such fact cannot be a ground for reassessment."

5.1. Further reliance is placed on the judgement of Hon'ble Gujarat High Court rendered in the case of Parixit Industries (P.)Ltd. vs. ACIT reported at (2012) 20 taxmann.com 750 (Guj.), wherein the Hon'ble Jurisdictional High Court has held as under:-

"25, It is now a settled law that if an explanation is added to a section of a statute for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. Thus, it is not a case of introduction of new provision of law by retrospective operation. We have found that the petitioner had disclosed all the materials regarding its activities and there was no suppression of materials. In spite of such disclosure, the Assessing Officer gave benefit of the provision by considering the then Explanation which was substantially the same and thus, it could not be said that any income escaped assessment in accordance with the then law. We have already pointed out that the Assessing Officer has now given a second thought over the same materials and according to him, as the assesses is a contractor or supplier of

irrigation products, it cannot be called a developer of any new infrastructural facility.

26. From the materials placed before him by the petitioner, the Assessing Officer earlier did not arrive at such conclusion and thus, the amended Explanation subsequently added cannot be of any help to him in arriving at the second opinion based on the alleged new law..

27. Moreover, in the reason assigned in support of initiation of reopening proceedings, such reason has not been disclosed.

28. We, thus, find that the condition precedent for issue of notice impugned in this Special Civil Application has not been established from the materials on record and consequently, the notice is liable to be quashed on that ground.

29. We now propose to deal with the decision cited by Mr. Bhatt.

30. In the case of GKN Driveshafts (India) Ltd v. ITO [2003] 259 1TR 19/(2002) 125 Taxman 963 (SC) relied upon by Mr. Bhatt, as the judgment is a short one consisting of seven small paragraphs, we quote the entire judgment for the purpose of ascertaining whether the same is a binding precedent in the facts of the present case. The same is quoted below.

> *"1. Heard learned counsel for the parties.*
> *2. Leave is granted.*
> *3. By the order under challenge, a Division Bench of the High Court at Delhi dismissed the writ petition filed by the appellant challenging the validity of notices issued under Sections 148 and 143(2) of the Income Tax Act, 1961. The High Court took the view that the appellant could have taken all the objections in its reply to the notices and that, at that stage, the writ petition was premature. Accordingly, the writ petition was dismissed on 31-1-2001. Aggrieved by that order, the appellant is in appeal before us.*
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> *4. Mr M.L. Varma, learned Senior Counsel appearing for the appellant, submits that the impugned notices related to seven assessment years; that during the pendency of these appeals, in respect of two assessment years viz. 1995-96 and 1996-97, assessment has been completed against which appeals have been filed. Notices relating to the other five assessment years viz. 1992-*

93, 1993-94, 1994-95, 1997-98 and 1998-99, are now the subject-matter of these appeals.

5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.

6. Insofar as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct the Appellate Authority to dispose of the same, expeditiously.

7. With the above observations, the civil appeals are dismissed."

31. The general observations made in paragraph 5 of the judgment, in our opinion, cannot be construed as an absolute proposition of law on the subject. It appears that the said two-judge-bench did not refer to the earlier five-judge-bench or the three-judge-bench or even the two-judge-bench decisions of the Supreme Court quoted above by us in this judgment. In those judgments, those benches approved the proposition of law that a writ-court in exercise of power conferred under Article 226 of the Constitution of India can quash a notice of reopening of assessment under the circumstances indicated therein. Thus, in a case like the present one, where those conditions precedent have not been complied with, we, in exercise of power conferred under Article 226 of the Constitution, are entitled to quash the notice. The said decision, thus, cannot be said to have exhaustively laid down the law on the point."

5.2. The ld.counsel for the assessee has also placed reliance on the judgement of Hon'ble Delhi High Court in the case of Mohan Gupta

(HUF) vs. CIT and Anr. in Writ Petition (C) No.7660 of 2012, dated 28/01/2014, wherein the Hon'ble Delhi High Court has held as under:

"10. In response, it is argued that since the return was processed under Section 143(1) for the A.Y. 2005-06, which involves a mere intimation, rather than an application of mind or true assessment of the return, a less stringent threshold must be taken in terms of 'reasons to believe' that income has escaped assessment or not. This precise argument, however, has been considered and rejected by this Court in CIT v. Orient Craft, [2013] 354 ITR 536 (Delhi), in the following terms, and thus is of no avail in the present case either:

> *"12.....The assumption of the Revenue that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in Section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore it is not permissible to adopt different standards while interpreting the words "reason to believe" vis-a-vis Section 143(1) and Section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under Section 143(3) cannot apply where only an intimation was issued earlier under Section 143(1). It would in effect place an assessee in whose case the return was processed under Section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny assessment made under Section 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under*
>
> *Section 143(1) and thereafter issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" in cases where assessments were framed*

earlier under Section 143(3) and cases where mere intimations were issued earlier under Section 143(l)may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed.

13. Certain observations made in the decision of Rajesh Jhaveri (supra) are sought to be relied upon by the revenue to point out the difference between an "assessment" and an "intimation". The context in which those observations were made has to be kept in mind. They were made to point out that where an "intimation" is issued under section 143(1) there is no opportunity to the assessing authority to form an opinion and therefore when its finality is sought to be disturbed by issuing a notice under section 148, the proceedings cannot be challenged on the ground of "change of opinion". It was not opined by the Supreme Court that the strict requirements of section 147 can be compromised. On the contrary, from the observations (quoted by us earlier) it would appear clear that the court reiterated that "so long as the ingredients of section 147 are fulfilled" an intimation issued under section 143(1) can be subjected to proceedings for reopening. The court also emphasised that the only requirement for disturbing the finality of an intimation is that the assessing officer should have "reason to believe" that income chargeable to tax has escaped assessment. In our opinion, the said expression should apply to an intimation in the same manner and subject to the same interpretation as it would have applied to an assessment made under section 143(3). The argument of the revenue that an intimation cannot be equated to an assessment, relying upon certain observations of the Supreme Court in Rajesh Jhaveri (supra) would also appear to be self-defeating, because if an "intimation" is not an "assessment" then it can never be subjected to section 147proceedings, for, that section covers only an "assessment" and we wonder if the revenue would be prepared to concede that position. It is nobody's case that an "intimation" cannot be subjected to section 147proceedings; all that is contended by the assessee, and quite rightly, is that if the revenue wants to invoke section 147 it should play by the rules of that section and cannot bog down. In other words, the expression "reason to believe" cannot have two different standards or sets of meaning, one applicable where the assessment was earlier made under section 143(3) and another applicable where an intimation was earlier issued under section 143(1). It follows that it is open to the assessee to contend that notwithstanding that the argument of "change of opinion" is not available to him, it would still be open to him to contest the reopening on the ground that there was either no reason to believe or that the

alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment. In doing so, it is further open to the assessee to challenge the reasons recorded under section 148(2) on the ground that they do not meet the standards set in the various judicial pronouncements.""

11. For the above reasons, the writ petition is allowed and the impugned notices dated 26.03.2012 and 09.08.2012 are hereby set aside."

5.3. The ld.counsel for the assessee also placed reliance on the judgement of Hon'ble Bombay High Court rendered in the case of Rallis India Ltd. vs. ACIT and The Union of India in Writ Petition No.2514 of 2009, wherein the Hon'ble High Court has held as under:-

"19. In the present case, the principle of law which has been laid down by the Supreme Court in Max India (supra) would be attracted. On the date on which the Assessing Officer purported to exercise his power to re-open the assessment under Section 147, the legislative amendment by the insertion of clause (i) to Explanation" (1) to Section 115JB had not been brought into force on the statute book. Obviously, therefore, the subsequent amendment could not have been and is not a ground which has been taken by the Assessing Officer, while re-opening the assessment. The validity of the notice issued by the Assessing Officer in seeking to re-open the assessment must be determined with reference to the reasons which are found in support of the re-opening of the assessment. These reasons cannot be allowed to be supplemented on a basis which was not present to the mind of the Officer and could not have been so present on the date on which the power to re-open the assessment was exercised. We, therefore, hold-that the principle laid down by the Supreme Court in Max India (supra) would be attracted to the present case. Consequently, it is evident that the order of the Assessing Officer with reference to the computation of book profits under Section 115JB was at the least a probable view and as a matter of fact the correct view to take in view of the decision of the Supreme Court in HCL (supra). It is well settled that the law laid down by the Supreme Court is declaratory of the position as it always stood. In any event, as we have noted, the view of the Assessing Officer was supported by the interpretation placed even .contemporaneously in the

judgment of this Court in Echjay (supra) and in the judgments of the Delhi High Court in Etcher and HCL (supra). In the circumstances, there was no warrant for re-opening the assessment in exercise of the power conferred under Section 147."

5.4. In the light of law laid down in the judgements referred hereinbefore and in view of the fact that no contrary judgement of the Hon'ble Supreme Court is cited and brought to our notice by the Revenue and the AO had taken note of that the Hon'ble Bombay High Court rendered in the case of CIT vs. Echjay Forginings Pvt.Ltd. reported at (2001) 251 ITR 15 (Bom.) distinguished the judgement of the Hon'ble Madras High Court rendered in the case of DCIT vs. Beardsell Ltd. reported at (2000) 244 ITR 256(Mad.). Further, the AO noted the reliance made on the decisions of the Tribunal and proceeded not to consider the same. This Act of the AO is not justified, he ought to have considered the decisions relied upon by the assessee and, in case, the decisions as relied upon by the assessee were not applicable, he ought to have recorded so. It is not permissible under law that the decisions of Higher Forum is not considered on the whims and fancies of the lower authorities. Under these facts, in our considered view, the AO was not justified in re-opening the assessment, reassessment so framed is not valid. Thus, this ground of assessee's appeal is allowed.

6. Ground No.2 (as per chart) is against the confirmation of disallowances of Rs.48,12,701/- on account of operational and

maintenance expenses and Rs.1,16,25,712/- on account of excess interest charged to GEB amount debited to P&L account of provision for doubtful debts to book profit u/s.115JB of the Act. The ld.counsel for the assessee submitted that the ld.CIT(A) was not justified in confirming the disallowances. The ld.counsel for the assessee placed reliance on the judgement(s) of Hon'ble High Court of Karnataka in the case of CIT vs. Kirloskar System Ltd. reported at (2014) 220 Taxman 1 (Karnataka) and of CIT vs. Yokogawa India Ltd. reported at (2012) 204 Taxman 305(Karnataka). He also placed reliance on the decision of Coordinate Bench (ITAT "A" Bench Ahmedabad) in the case of ACIT vs. Vodafone Essar Gujarat Ltd. in ITA No.1999/Ahd/2008 for AY 2003-04, dated 11/05/2012.

6.1. On the contrary, ld.CIT-DR supported the orders of the authorities below and submitted that there is no illegality in the orders of the authorities below.

7. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the ld.CIT(A) in paras-2.6, 2.7 & 2.8 has decided this issue by observing as under:-

> *"2.6. I have perused the orders of Madras High Court, Bombay High Court and also the Apollo Tyres Ltd.case. It is evident that addition to book profit can be made u/s.115JB only if the item strictly falls under explanation to any*

of the clause (a) to (f) of 115JB(2). This view is settled by the Supreme Court in the case of Apollo Tyres referred above. Therefore the only issue to be seen is whether the action of the AO in adding back about amount can fall under any of the clauses (a) to (f). The details of provisions have been discussed in earlier part of this order and the details enclosed as per Annexure-A.

2.7. My observation and finding in this respect is as under:

(A) The provision includes the quantum of invoices received by GEB which are disputed without referring to the rebate discount for prompt payment. This was test checked for one month i.e. November in which the difference was Rs.44,67,973/- referred as Rs.44,47,015/- in the said provision. Other differences are on account of rebate discount as per PPA. Since the quantum of amounts payable by GEB are reduced, obviously the same cannot be said to be income accruing to the appellant company and cannot be taken as liability as referred in 115JB(2) clause(c). I would therefore hold that items of such nature are based on actual accounting practice followed by the appellant company and also with reference to the PPA for discount for prompt payment are not covered in clause(c) of Explanation to 115JB(2). Accordingly, such items considered in the above amount of Rs.21.80 crores cannot be added back to the book profit u/s.115JB.

(B) This relates to an item of Rs.48,17,701/-. This relates to operational and maintenance expenses disputed by GEB for the months of June 2000 to September,2000. The appellant company has submitted detailed account in this respect and submitted that the appellant company has been raising debit notes to GEB for various expenses operating under this head incurred by the appellant company and claimed from GEB. It is submitted that the amounts of debit notes raised till May, 2000 have been accepted by GEB while those for later months have been received as on 31.03.2001. Therefore having regard to the fact that the amounts debited are being received from GEB there cannot be any reason that the amounts for the months of June to Sept.2000 are also not receivable by the appellant company. The same is therefore held to be a provision which is not ascertained liability falling under explanation(c) to section 115JB(2) and the action of the AO in adding the same to the book profit is upheld.

(C) This relates to an item of provision relating to excess interest charged to GEB of Rs.1,16,25,712/-. The appellant's representative Shri Nitin Parekh was not able to give details of the same and in the absence of the

same I cannot hold that the provision relates to any ascertained liability and accordingly the action of the AO in adding back this amount as per clause (c) of explanation to section 115JB is therefore justified.

2.8 To summarise, out of Rs.21,80,58,244/-, the addition in respect of the following amounts are upheld while working out income u/s.115JB.

(i) Rs.48,12,701/- & (ii) Rs.1,16,25,712/- totalling to Rs.1,64,38,413/- and the appellant company gets relief of Rs.20,16,19,831/- accordingly out of the additions made of Rs.21,80,58,244/-."

7.1. The ld.counsel for the assessee has relied on the judgement of Hon'ble Karnataka High Court rendered in the case of CIT vs. Yokogawa India Ltd. reported at (2012) 17 taxmann.com 15 (Kar.):: (2012) 204 Taxman 305 (Karnataka), wherein the Hon'ble High Court held as under:-

"8. In the present case, the debt is an amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore it was held that Item (c) of the Explanation is not attracted to the facts of the case. Item (c) in Section 115JA and 115-JB(1) are identical. In order to attract the Explanation the debt which is doubtful or bad should satisfy the requirement contemplated in Item (c) of the Explanation. It is the amount or amounts set aside as provisions made for meeting the liability other than the ascertained liabilities. In the instant case also the bad and doubtful debt for which a provision Is made which is in the nature of diminution in the value of any asset would not fall within item (c) of Explanation (i). It is in that context the appellate Commissioner as well as the Tribunal has granted relief to the assessee. Realising the fatality of the said argument, it is contended now that item (i) cannot amount to satisfaction as provision for diminishing in the value of assets is substituted, in case of the assessee falls under Item (c). In meeting the aforesaid case, the learned counsel for the assessee brought to our notice the judgment of the Apex Court in the case of Vijaya Bank (supra] where the Apex Court had an occasion to consider his explanation. It accepted the argument on behalf of the Revenue to the effect that the explanation makes it very clear that there is a dichotomy

between actual write off on the one hand and provision for bad and doubtful debt on the other. A mere debit to the profit and loss account would constitute a bad and doubtful debt, but it would not constitute actual write off and that was the very reason why the explanation stood inserted. Prior to the Finance Act, 2001 many assessees used to take the benefit of deduction under Section 36(l)(vii) of the 1961 Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of Explanation to say that a mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off The Apex Court accepted the said legal position. However it was clarified that besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet and, consequentially, at the end of the year, the figure in the loans and advances or the debtors on the assets side of the balance sheet was shown as net of the provision for the impugned bad debt. Then the said amount representing bad debt or doubtful debt cannot be added in order to compute book profit. Therefore, after the Explanation the assessee is now required not only to debit the profit and loss account but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the Impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors from the assets side of the balance sheet the Explanation to Section 115JA or JB is not at all attracted. In that context even if amendment which is made retrospective the benefit given by the Tribunal and the appellate Commissioner to the assessee is in no way affected. In that view of the matter, we do not see any merit in this appeal."

7.2. This judgement of the Hon'ble High Court of Karnataka has been followed by the Hon'ble Karnataka High Court in the case of CIT vs. Kirloskar Systems Ltd. reported at (2014) 220 Taxman 1 (Karnataka).

The Hon'ble High Court in the case of CIT vs. Kirloskar Systems Ltd. in para-2 has held as under:-

> *"2. The Apex Court in the case of Vijaya Bank v. CIT [2010] 323 ITR 166/190 Taxman 257 (SC) has held that the assessee is entitled to the benefit of rejection under Section 36(l)(vii) of the Income Tax Act, 1961 (for short 'the Act) when there is an actual write off by the assessee in its book. This Court in the case of CIT v. Yokogawa India Ltd. [2012] 204 Taxman 305/17 taxmann.com 15 (Kar.) has held adjustment of provision for bad and doubtful debts is reduced from the loans and advances or the debtors from the assets side of the balance sheet, the Explanation to Section 115JA and JB is not at all attracted. Therefore, after the Explanation the assessee is now required not only to debit the P and L account but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. This Court in the case of CIT v. Jupiter Bio-Science Ltd. [2013] 352 ITR 113/[2011] 202 Taxman 80/13 taxmann.com 161 (Kar.) has held the assessee is 1kble to pay advance tax as per the amended provisions of Section 115JB of the Act for the relevant period. However, he is not liable to pay interest on the amount due as per the amended provisions. However, he has not paid the advance tax as per the provisions existing prior to the amendment. Hence, he is liable to pay interest on the said amount deducting the difference of the tax paid. The Apex Court in the case of Bharat Earth Movers v. CIT [2000] 245 ITR 428/112 Taxman 61 (SC) has held that an assessee who is maintaining the accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. The liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. Therefore for that, reason it was held that the gratuity payable and encashment of earned leave is not a contingent liability and pro vision thereof is deducted. In the light of the settled principles laid down by the Apex Court, no substantial questions of law arise for consideration in this appeal. Accordingly, the appeal is dismissed."*

7.3. We find that the Coordinate Bench rendered in the case of ACIT vs. Vodafone Essar Gujarat Ltd. in ITA No.1999/Ahd/2008(supra), has held as under:-

> *"11. We have considered the rival contentions, the case laws cited and perused the documents on record. It is an a fact that the assessee had made provision for bad and doubtful debts and the same has been charged to the Profit and Loss Account for the year ended 31st March 2003. In the Balance Sheet as on 31st March 2003 of the assessee, it can be seen that the provision of bad and doubtful debts has been reduced from the gross debtors and the net sundry debtors are shown as asset in the balance sheet. Thus the provision for bad and doubtful debts cannot be termed as a provision for liability but is in the nature of diminution in the value of asset. In view of the aforesaid facts, we are of the view that the facts in the present case are identical to that of the case of Yokogwa India Ltd. (supra). We therefore, respectfully following the decision of Hon'ble High Court in the case of CIT vs. Yokogwa India Ltd., (supra) we do not find any infirmity in the order of CIT(A). Accordingly the appeal-of the Revenue is dismissed.*
>
> *12. Since the assessee's submission dated 9th August, 2010 regarding the ground stating "The Ld. Commissioner "of Income Tax (A)-XIV, Ahmedabad, has erred in law and in facts in deleting the addition to the book profits of Rs.6,28,14,653/- for the computation of MAT liability" has already been dealt with in Revenue's appeal (supra) in ground No. 1 is decided in favour of the assessee, hence we do not propose to adjudicate on the ground filed by the assessee in terms of its application under Rule 27 of the Income tax Appellate Rules."*

7.4. The ld.CIT-DR could not place any contrary binding precedent on record against the aforesaid judgements relied upon by the ld.counsel for the assessee. The authorities below have not given any finding that the assessee has not reduced the debtors from the asset side of the balance-

sheet to the extent to the corresponding amount so that, at the end of the year, the amount of debtors is shown as net of the provision for the impugned bad debt. In the absence of the same therefore, respectfully following the ratio laid down by the Hon'ble Karnataka High Court in the case(s) of CIT vs. Yokogawa India Ltd. and CIT vs. Kirloskar Systems Ltd.(supra) and also following the decision of Coordinate Bench in the case of ACIT vs. Vodafone Essar Gujarat Ltd.(supra), we hereby set aside the order of the ld.CIT(A) on this issue and direct the AO to delete the disallowances. Thus, this ground of assessee's appeal is allowed.

8. Ground No.3 (as per chart) is against confirming the action of AO in granting depreciation although not claimed by the assessee. The ld.counsel for the assessee submitted that the issue is now squarely covered in favour of assessee by the judgement of Hon'ble Jurisdictional High Court rendered in the case of DCIT vs. Sun Pharmaceuticals Ind.Ltd. in Tax Appeal No.93 of 2000, dated 17/12/2014. The ld.counsel for the assessee submitted that earlier the Hon'ble Bombay High Court in the case of Plastiblends India Ltd. vs. Addl.CIT and Others reported at (2009) 318 ITR 352 (Bom)[FB], dated 16/10/2009, the issue was decided against the assessee and now the issue has been decided in favour of assessee by the Hon'ble Jurisdictional High Court in the case of Dy.CIT

vs. Sun Pharmaceuticals Ind.Ltd.(supra). Therefore, the order of the ld.CIT(A) deserves to be set aside.

8.1. On the contrary, ld.CIT-DR supported the orders of the authorities below and submitted that the depreciation is linked with the profit & loss of the assessee and the assessee cannot forgo the claim of depreciation.

9. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Hon'ble Bombay High Court in the case of Plastiblends India Ltd. vs. Addl.CIT and Others (supra) has held as under:-

> ***"47.*** *Thus, the common thread passing through the above decisions of the apex Court as well as the decisions of this Court including the decision in the case of Indian Rayon Ltd. (supra) is that the deductions under Chapter VI-A are linked to profits and the profits for the purposes of deduction under Chapter VI-A have to be determined after considering all deductions allowable under the Act (except deductions allowable under Chapter VI-A). Therefore, whether the assessee has claimed current depreciation or not has no bearing in determining the quantum of deduction allowable under s. 80-IA of the Act and once it is found that disclaiming depreciation is not in the interest of the assessee, the AO was justified in allowing current depreciation to the assessee."*

9.1. However, the Hon'ble Jurisdictional High Court in the case of Dy.CIT vs. Sun Pharmaceuticals Ind.Ltd. has formulated the substantial question of law, which reads as under:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that depreciation not claimed for by the assessee, cannot be allowed as a deduction despite the introduction of the concept of block assets?"

9.2. We find that the Hon'ble Gujarat High Court in the case of Dy.CIT vs. Sun Pharmaceuticals Ind.Ltd. dated 17/12/2014(supra) had taken note of the case of Hon'ble Bombay High Court in the case of Plastiblends India Ltd. reported at (2009)318 ITR 352 (Bom)[FB], dated 16/10/2009. The Hon'ble Jurisdictional High Court in the case of Dy.CIT vs. Sun Pharmaceuticals Ind.Ltd. in para-13 of its order has decided this issue as under:-

"13. We hold that (1) that the Appellate Tribunal is right in law and on facts in allowing the deduction u/s. 80HHC and 80IA on gross total income inclusive of income from other sources. As far as newly added question is concerned, there also we hold that the the Appellate Tribunal is right in law and on facts in holding that depreciation not claimed for by the assessee, cannot be allowed as a deduction despite the introduction of the concept of block assets. The questions are answered in favour of assessee and against the Revenue. The Tax Appeal stands dismissed."

9.3. Respectfully following the aforesaid binding precedent of the Hon'ble Jurisdictional High Court, we hereby set aside the order of the ld.CIT(A) and delete the addition made by the AO. Thus, ground No.3 of assessee's appeal is allowed.

10. Ground No.4 (as per chart) is not pressed by the ld.counsel for the assessee. Therefore, the same is rejected as such.

11. Ground Nos.5 & 6 (as per chart) are against confirming the levy of interest u/s.234-A, 234-B & 234-C of the Act. The ld.counsel for the assessee submitted that the authorities below were not justified in charging the interest and confirming the same u/s.234-A, 234-B & 234-C of the Act. The ld.counsel for the assessee placed reliance on the following judgements:-

1. Emami Ltd. vs. CIT reported at (2011)337 ITR 470 (Cal.).
2. Prime Securities Ltd. vs. ACIT reported at (2011) 333 ITR 464 (Bom).
3. ITAT "B" Ahmedabad decision in the case of Intas Exports vs. ACIT in ITA Nos.1819 & 1820/Ahd/2008 for AYs 2003-04 & 2004-95, dated 30/07/2010.

11.1. On the contrary, the CIT-DR supported the orders of the authorities below.

12. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. Since we have allowed ground No.I of the assessee's appeal holding the reassessment being not valid, therefore these grounds of appeal are also allowed.

13. Apropos to additional ground raised in the assessee's appeal, we have heard the rival contentions of the parties and gone through the material available on record. Since we have allowed ground No.2 of assessee's appeal(supra) this ground has become academic. Hence,we are not adjudicating the same.

14. Now, we take up the Revenue's appeal in ITA No.1055/Ahd/2005 for AY 2001-02. The Revenue has raised the following grounds of appeal:-

1. *The Ld.CIT(A) erred in law and on facts of the case in deleting the addition of Rs.20,16,16,831/- out of the addition of Rs.21,80,58,244/- made to the book profit of the assessee u/s.115JB of the I.T.Act.*
2. *On the facts and in the circumstances of the case, the Ld.CIT(A) ought to have upheld the order of the A.O.*
3. *It is, therefore, prayed that the order of the Ld.CIT(A) may be cancelled and that of the AO may be restored to the above extent.*

14.1 We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the ld.CIT(A) has decided this issue by observing as under:-

> *"2.6. I have perused the orders of Madras High Court, Bombay High Court and also the Apollo Tyres Ltd.case. It is evident that addition to book profit can be made u/s.115JB only if the item strictly falls under explanation to any of the clause (a) to (f) of 115JB(2). This view is settled by the Supreme Court in the case of Apollo Tyres referred above. Therefore the only issue to be seen is whether the action of the AO in adding back about amount can fall under any of the clauses (a) to (f). The details of provisions have been*

discussed in earlier part of this order and the details enclosed as per Annexure-A.

2.8. My observation and finding in this respect is as under:

(D) The provision includes the quantum of invoices received by GEB which are disputed without referring to the rebate discount for prompt payment. This was test checked for one month i.e. November in which the difference was Rs.44,67,973/- referred as Rs.44,47,015/- in the said provision. Other differences are on account of rebate discount as per PPA. Since the quantum of amounts payable by GEB are reduced, obviously the same cannot be said to be income accruing to the appellant company and cannot be taken as liability as referred in 115JB(2) clause(c). I would therefore hold that items of such nature are based on actual accounting practice followed by the appellant company and also with reference to the PPA for discount for prompt payment are not covered in clause(c) of Explanation to 115JB(2). Accordingly, such items considered in the above amount of Rs.21.80 crores cannot be added back to the book profit u/s.115JB.

(E) This relates to an item of Rs.48,17,701/-. This relates to operational and maintenance expenses disputed by GEB for the months of June 2000 to September,2000. The appellant company has submitted detailed account in this respect and submitted that the appellant company has been raising debit notes to GEB for various expenses operating under this head incurred by the appellant company and claimed from GEB. It is submitted that the amounts of debit notes raised till May, 2000 have been accepted by GEB while those for later months have been received as on 31.03.2001. Therefore having regard to the fact that the amounts debited are being received from GEB there cannot be any reason that the amounts for the months of June to Sept.2000 are also not receivable by the appellant company. The same is therefore held to be a provision which is not ascertained liability falling under explanation(c) to section 115JB(2) and the action of the AO in adding the same to the book profit is upheld.

(F) This relates to an item of provision relating to excess interest charged to GEB of Rs.1,16,25,712/-. The appellant's representative Shri Nitin Parekh was not able to give details of the same and in the absence of the same I cannot hold that the provision relates to any ascertained liability and accordingly the action of the AO in adding back this amount as per clause (c) of explanation to section 115JB is therefore justified.

2.8 To summarise, out of Rs.21,80,58,244/-, the addition in respect of the following amounts are upheld while working out income u/s.115JB.

(i) Rs.48,12,701/- & (ii) Rs.1,16,25,712/- totalling to Rs.1,64,38,413/- and the appellant company gets relief of Rs.20,16,19,831/- accordingly out of the additions made of Rs.21,80,58,244/-."

14.2. The ld.counsel for the assessee relied on the decision of Hon'ble Apex Court rendered in the case of CIT vs. HCL Comnet Systems & Services Ltd. reported at (2008) 305 ITR 409(SC). We find that the ld.CIT(A) has given a finding on fact. This finding is not controverted by the Revenue by placing any contrary material on record. Therefore, we do not deem fit to interfere with the order of ld.CIT(A), same is hereby affirmed. Thus, this ground of Revenue's appeal is dismissed.

15. In the combined result, appeal of the Assessee is partly allowed, whereas appeal of the Revenue is dismissed.

Order pronounced in the Court on Friday, the 19th day of June, 2015 at Ahmedabad.

Sd/-
(एन.एस.सैनी)
लेखा सदस्य
(N.S. SAINI)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 19 / 06 /2015
टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VIII, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad