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

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

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER & SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

1. आयकर अपील सं./I.T.A. No.2903/Ahd/2015
2. आयकर अपील सं./I.T.A. No.2904/Ahd/2015

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

Gruh Finance Ltd. 'Gruh', Netaji Marg Mithakali Six Roads Ellisbridge Ahmedabad – 380 006	**बनाम**/ Vs.	The Addl.CIT Rnage-4 Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG 7010 K		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Appellant by** :	Ms. A.N. Shah, AR
प्रत्यर्थी की ओर से/**Respondent by** :	Shri K. Madhusudan, Sr.DR

सुनवाई की तारीख / **Date of Hearing**	22/09/2017
घोषणा की तारीख /**Date of Pronouncement**	29/ 09 /2017

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals by the Assessee are directed against the separate order of the Commissioner of Income Tax(Appeals)-VIII, Ahmedabad [CIT(A) in short] dated 30/01/2012 & 31/03/2015 for the Assessment Years (AYs) 2008-09 & 2011-12 respectively.

2. In both these captioned appeals, the assessee is aggrieved by the penalty imposed by the CIT(A) on the quantum enhancement towards disallowance of expenditure incurred in terms of section 14A read with Rule 8D of the Income Tax Rules, 1962.

3. We shall take the assessee's appeal in ITA No.2903/Ahd/2015 for AY 2008-09 as the lead case.

4. The ground of appeal raised by the Assessee reads as under:-

> *1. The Learned Commissioner of Income Tax(Appeals)-2, Ahmedabad has erred in law and on facts of the case by holding that the Appellant has committed the default u/s.271(1)(c) and accordingly has erred in levy penalty of Rs.1,08,41,183/- u/s.271(1)(c) of the Income Tax Act, 1961.*

5. The assessee is a Housing Finance Company in which public are substantially interested and the main object of the business of the assessee-company is to provide long term finance for housing besides providing finance and making investment etc.

5.1. In the course of the scrutiny assessment under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") r.w.s.263 of the Act, the AO observed that assessee has earned dividend income of Rs.1,89,42,065/- which was claimed as exempt from taxation. It was further noticed by him that the assessee itself had disallowed an amount

of Rs.9,45,960/- under s.14A of the Act. The AO thereafter took note of the submissions made before the CIT in 263 proceedings as well as various replies filed before him in this regard and applied Rule 8D of the I.T.Rules 1962 for the purposes and computation of disallowance of expenditure incurred in relation to the exempt income. The AO computed the aggregate disallowance of Rs.1,22,25,394/- as per Rule 8D in substitution of *suo motu* disallowance of Rs.9,45,960/- made by the assessee.

5.2. The aforesaid action of the AO was challenged before the CIT(A). The CIT(A) however, enhanced the disallowance under s.14A by Rs.3,28,52,064/-. The Coordinate Bench of ITAT in appeal on aforesaid enhancement also confirmed the action of the CIT(A) in principles. However, the ITAT restricted the disallowance to the extent of exempt income quantified by the assessee. Thus, while upholding the disallowance on principles, partial relief on quantum of disallowance was given to assessee.

6. Consequent upon the quantum proceedings, penalty order was passed under s.271(1)(c) of the Act by the CIT(A) vide order dated 16/09/2015. The penalty was quantified by the CIT(A) at Rs.1,08,41,183 on aforesaid enhancement of income of Rs.3,28,52,06/-.

7. Aggrieved by the aforesaid order of the CIT(A) towards imposition of penalty, the assessee has preferred appeal before the Tribunal.

8. The Ld.AR for the assessee submitted at the outset that the penalty imposed under s.271(1)(c) of the Act for alleged default in computation of disallowance as per Rule 8D of the IT Rules, 1962 by the CIT(A) is misdirected in law. The Ld.AR submitted that this was the first year of applicability of Rule 8D of the IT Rules where the law on the applicability and computational aspect was at primitive stage and only evolving. The assessee itself has made *suo motu* made disallowance of Rs.9,45,960/- while filing the return of income. The aforesaid *suo motu* disallowance also matches with the tax audit report issued by the Chartered Accountant in this regard. The Ld.AR thereafter submitted that the aforesaid disallowance of Rs.9,45,960/- was computed by allocation of administrative expenditure between the exempt income and taxable income on proportionate basis. Therefore, there was a rationale basis for arriving at *suo motu* disallowance. The Ld.AR next submitted that the disallowance giving rise to the penalty proceedings is on account of disallowance of direct expenditure towards interest costs of Rs.3,28,52,064/-. The CIT(A) invoked Rule 8D(2)(i) based on the working of interest attributable on the interest bearing funds withdrawn from various bank accounts and invested in mutual funds temporarily.

8.1. The Ld.AR submitted that there was no opening and closing balance of mutual funds at the beginning or at the end of the financial year. The action of the assessee in computing the disallowances made under s.14A of the Act was bonafide. It was submitted that merely because some different figure has been computed and confirmed in the quantum proceedings by the Coordinate Bench will not *ipso facto* result in imposition of grievous penalty.

8.2. The Ld.AR vehemently pointed out in elaboration that the quantum disallowance under s.14A is towards interest expenditure incurred on loan bearing funds as attributable to mutual funds giving rise to tax free income. The Ld.AR in this connection emphasized that the assessee is holding its own capital to the tune of Rs.190.26 crores at the end of the financial year which is substantially in excess of investment in mutual funds of around Rs.16.64 corres. Thus, interest-free capital of assessee outweighs the corresponding investment by nearly twelve times. Hence, the assessee was under bonafide belief of no disallowance attributable on such investments towards interest expenses.

8.3. The Ld.AR next submitted that the assessee has preferred appeal before the Jurisdictional High Court against the order of the ITAT endorsing part confirmation of the disallowance in quantum proceedings.

The Hon'ble Gujarat High Court in Tax Appeal Nos.390/391/392 of 2017 was pleased to admit the aforesaid issue of disallowance under s.14A vide its order dated 18/07/2017. The Ld.AR therefore submitted that the basis of disallowance giving rise to the penalty proceedings itself is in debate and admittedly involves substantial question of law as recognized by the Hon'ble High Court.

8.4. The ld.AR thereafter submitted in the alternative that the quantum of disallowance under s.14A was also reduced from Rs.3,28,52,064/- to Rs.1,89,42,065/- by the Tribunal. In tandem the penalty imposed also requires to be reduced in the alternative.

9. The Ld.DR for the revenue, on the other hand, submitted that the CIT(A) has established the direct nexus between interest-free fund and the corresponding mutual fund investment. The Ld.DR contended that while the assessee on one hand claimed deduction towards interest expenditure, the corresponding dividend income has been claimed exempt. The direct expenditure found attributable towards earning exempt income on facts thus cannot be denied. The Ld.DR submitted that in these circumstances, imposition of penalty on such *ex-facie* omission in making disallowance, calls for consequential penalty as a remedy for loss of revenue. The Ld.DR therefore submitted that no interference with the order of the CIT(A) is called for. The Ld.DR relied

upon the decision of the Coordinate Bench of the Tribunal in GSFC vs. ACIT 39 SOT 570 (Ahd.) and of Deloitte Consulting India Pvt.Ltd. (2014) 151 ITD 454 (Mum.) for the proposition that express violation of provision of law in making computation whereby chargeable income has escaped assessment warrants imposition of penalty. The Ld.DR accordingly relied upon the order of the CIT(A) for imposition of penalty.

10. We have carefully considered the rival submissions. The assessee has agitated the imposition of penalty by CIT(A) on quantum disallowance carried out by the CIT(A) under s.14A in exercise of its enhancement powers. It is the case of the Revenue that the disallowance has been carried out under Rule 8D(2)(i) of the I.T. Rules where it was factually found that interest bearing funds were deployed towards certain investments giving rise to tax-free income. It is further of the case on behalf of the Revenue that in view of the direct nexus between the interest bearing funds and corresponding investments, the disallowance carried by the Commissioner cannot be assailed in any manner. The action of the CIT(A) has also been confirmed by the ITAT in quantum proceedings. The assessee, on the other hand, claims that the interest bearing funds which could not be immediately deployed for the purposes of its investments were temporarily placed in mutual funds as a measure of commercial expediency. The assessee does not have any such opening

investment or closing investment in its financial statement. The investment made is very temporary which has given rise to such exempt income. To buttress its view on non-imposition of penalty, the assessee contends that it has large chunk of own capital which is totally interest-free in comparison to a small portion of investment in mutual funds. The assessee also submits that the quantum addition has been appealed against in the Jurisdictional High Court and is pending for final adjudication after admission of the 'substantial question of law' contemplated under s.260A of the Act.

11. On these broader facts, we are inclined to admit the plea of the assessee towards non-imposition of penalty imposed under s.271(1)(c) of the Act. While the action of the CIT(A) has been endorsed by the Coordinate Bench of the ITAT in the quantum proceedings, aforesaid order of the ITAT is stated to have been admitted for adjudication on merits in the appeal filed under s.260A of the Act. The assessee has shown existence of mitigating circumstances in the form of own funds which substantially exceeds the application of interest-bearing funds towards mutual funds. In these facts, one cannot attribute motive for violation of Rule 8D(2)(i) when tested on distinct parameters of penalty proceedings. The issue involved cannot also be said to be entirely free of any debate whatsoever in view of admission of substantial question of law by the Hon'ble Jurisdictional High Court. Coupled with this, as

noted earlier, the assessee has taken the shelter of availability of own funds at its disposal. Under these circumstances, it is reasonable to infer bonafide and consequently difficult to approve the action of the Revenue for imposition of penalty with the aid of section 271(1)(c) of the Act.

12. Needless to say, disallowance of expenditure *ipso facto* does not mean concealment of income. We also observe that the assessee has itself made *suo motu* disallowance which is not totally devoid of any reasonable basis. Therefore, no culpability is attributable on the part of the assessee in the instant case. It is trite that a finding in the quantum proceedings on disallowance cannot be automatically adopted for the purposes of section 271(1)(c) of the Act. As noted above, the assessee have discharged primary burden lay upon it. The explanation offered by the assessee towards interest disallowance made under s.14A appears to be satisfactory and is perceived to bear trappings of bonafide. The aforesaid disallowance under s.14A of the Act thus cannot be equated with any concealment of income. In the totality of the circumstances, we are of the view that discretion available to the CIT(A) for imposition of penalty ought to have been exercised judiciously and in favour of the assessee. Accordingly, the penalty so imposed by the Revenue is cancelled.

13. In the result, assessee's appeal in ITA No.2903/Ahd/2015 for AY 2008-09 is allowed.

ITA No.2904/Ahd/2015 for AY 2011-12 – Assessee's appeal

14. Both the sides consented that identical issue is involved in this appeal too. Thus, for parity of reasons noted above, our view in ITA No.2903/Ahd/2015 for AY 2008-09 above shall apply *mutatis mutandis* to the appeal captioned above. As a result, the appeal of the Assessee in ITA No.2904/Ahd/2015 for AY 2011-12 concerning penalty imposed under s.271(1)(c) of the Act is also quashed.

15. As a result, assessee's appeal in ITA No.2904/Ahd/2015 for AY 2011-12 is allowed.

16. In the combined result, both the appeals of the assessee are allowed.

This Order pronounced in Open Court on	**29/ 09 /2017**

Sd/-	Sd/-
(एस.एस.गोदारा)	(प्रदीप कुमार केडिया)
न्यायिक सदस्य	लेखा सदस्य
(S.S. GODARA)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 29/ 09 /2017

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-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