

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

सर्वश्री प्रमोद कुमार, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.440/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

Karan Synthetics (India) Pvt. Ltd. 104, Sardar Patel Colony, Stadium Road, Ahmedabad.	बनाम/ Vs.	Deputy Commissioner of Income Tax (OSD)-I, Circle-4, Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK 6270 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri V. K. Singh, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri N. B. Shah, A.R.

सुनवाई की तारीख / Date of Hearing	11/08/2017
घोषणा की तारीख /Date of Pronouncement	27/10/2017

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-2, Ahmedabad, dated 09/01/2015 for the Assessment Year (AY) 2011-12, on the following Grounds:

1.1 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making disallowance u/s.14A of the I.T. Act read with Rule 8D of the I.T. Rules, 1962 for a sum of Rs.1,25,760/- out of expenditure which had

been incurred wholly and exclusively for the purpose of the business and relatable to earning of income chargeable to tax.

- 1.2 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making impugned disallowance in utter disregard to the fact that the appellant had duly discharged the onus of proving that it has not incurred any expenditure by way of finance cost for making the investment in shares which had yielded exempted dividend income of Rs.41,760/-, that it had also not incurred any expenditure by way of administrative cost for maintaining such investment.*
 - 1.3 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making impugned disallowance in utter disregard to the fact that the appellant had submitted before the CIT(A) that investments in shares of Rs.13,24,100/- is out of the capital and reserves of the company which amounted to Rs.10,66,04,000/- and therefore the appellant has not incurred any financial cost for the investment in shares.*
 - 1.4 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making impugned disallowance without appreciating the appellant's contentions that even if any disallowance u/s.14A were to be made, the same should not exceed the dividend income of Rs.41,760/-.*
 - 1.5 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making impugned disallowance in utter disregard to the ration of the binding judgments of the jurisdictional High Court of Gujarat in the case of CIT vs. Torrent Power Limited (2014) 363 ITR 474 (Guj) and CIT vs. UTI Bank Limited (2013) 215 Taxman 8(Guj.) and judgment of the UAT, Ahmedabad Bench in the case of Mohit Industries Limited ITA 2493/Ahd/2010 and Patel Tractors ITA 39/Ahd/2010 which were specifically brought to the notice of the AO.*
 - 1.6 It is therefore prayed that the impugned disallowance may please be deleted.*
- 2.1 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad*

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grossly erred in confirming the action of the AO in making addition/disallowance for a sum of Rs.21,202/- being employees' contribution to Provident Fund & ESI which were deposited late but before the due date for filing the return of income u/s.139(1) of the I.T. Act.

2.2 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the impugned addition/disallowance in utter disregard to the ratio of the judgment of the Supreme Court in the case of CIT vs. Vinay Cement Co. Ltd. (113 CTR 268) and CIT vs. Alum Extrusions Limited (319 ITR 306 (SC)) which were specifically brought to the notice of the AO.

2.3 It is prayed that the impugned addition/disallowance may please be deleted.

3.1 In the facts and circumstances of the case as well as in law, the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad grossly erred in confirming the action of the AO in making computing the book-profit of the appellant company u/s.115JB of the I.T. Act at Rs.1,25,670/- in utter disregard to the fact that as per the audited Profit & Loss Account of the appellant company which had been prepared in accordance with the provisions of Part-II and III of Schedule-VI to the Companies Act, 1956, there is book loss of Rs.98,76,456/-. Therefore, even after making the adjustment in respect of the addition of Rs.1,25,670/- made by the AO u/s.14A there will be book loss of Rs.97,50,786/- and consequently the appellant is not liable to tax u/s.115JB. The computation is an under:

Book Loss as per Profit and Loss Account prepared in accordance with provisions of Part-II and III of Schedule-VI to Companies Act, 1956	Loss Rs.	98,76,456/-
Less: Adjustment on account of disallowance u/s.14A	Rs.	1,25,670/-
	Loss Rs.	97,50,786/-

Thus, the assessee is not liable to tax u/s.115JB.

3.2 It is therefore, prayed that the tax levied by the AO u/s.115JB may please be cancelled.

2. The relevant facts as culled out from the materials on record are as under:-

In this case, assessee is engaged in the business of Manufacturing of HDPE woven fabrics and sacks (Bags). The various issues arising out of the scrutiny of accounts of the assessee during the course of assessment proceedings are discussed in the subsequent paras.

Disallowance of Expenses u/s.14A

On perusal of the return of income it is noticed that the assessee has earned dividend income of Rs.41,760/- during the year and claimed as exempt u/s.10(33) of the Income tax Act, 1961. The assessee vide notice dated 24/12/2013 was requested to show-cause as to why the provisions of section 14A read with Rule 8D of the Income tax should not be applied in this regard. The assessee has submitted reply as under:

“Please note that there are no direct or Indirect expenses Incurred to earn the same. Still on the safer side, the assessee-company has made disallowance of Rs.4176/- in the same.”

The submission of the assessee is duly considered but the same is not found to be acceptable, The assessee is in receipt of exempt income and no separate account has been maintained in regard to the earning of exempt income. The assessee has not furnished the details of exact source of investments in shares during the year under consideration. There is no mention as to whether or not the assessee has maintained separate accounts of interest bearing fund and non-interest bearing funds utilized for investment. The funds once put in business get intermingled

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and it is not possible to keep the funds segregated for each and every purpose. The assessee has not produced day to day movement of funds so that segregation of nature of spending can be ascertained with a degree of certainty. In absence of any specific details of source of investment in share, it could be inferred that the assessee company has invested interest bearing funds also for making investment in shares. The interest expenses incurred for making investment in shares cannot be allowed as deduction in light, of the decision of Hon'ble ITAT, Ahmedabad in the case of Harish Krishnakant Bhatt Vs. ITO (2004) 91 ITD 311(Ahd). Furthermore, the management and maintenance of such investments always entail certain administrative expenditure. The assessee has made investment in exempt income earning securities and has earned exempt income. When the assessee is having sufficient interest free funds then what is the need for taking unsecured loan and secured loan. The assessee failed to submit a satisfactory reply relating to this issue. The assessee failed to prove the nexus between the good amount of investment made by the assessee and interest free funds. In view of the above, the contention of the assessee is rejected. The amount disallowable u/s.14A is computed on estimate basis as under:

Total interest		40,410,130
Direct interest (Total interest Rs.40410130 minus Rs....0)		40,410,130
An Average value of Investment	Opening balance of Investments Rs.	1,324,100
	Closing balance of investments Rs.	1,324,100
	Total =	2,648,200
	Average	1,324,100
An Average value of assets	Opening balance of assets Rs.	416,015,212
	Closing balance of assets Rs.	452,428,487
	Total =	868,443,699

	average	434,221,849
	Disallowances under clause (i) of the Rule 8 D [Direct interest Expense]	
	Disallowance under clause (ii) of the Rule 8D[A*(B/C)]	1,23,225
	Disallowance under clause (iii) of the Rule 8D	6,621
	Total Disallowance	1,29,846
	Less : Disallowances made in the return of income	4,176
	Net disallowance u/s.14A	1,25,670

Therefore, an amount of Rs.1,25,670/- is hereby disallowed u/s.14A of the Act and added to total income of the assessee.

Disallowance of Employee's Provident Fund u/s.36(i)(va)

On perusal of the Audit Report submitted by the assessee it is found that the assessee has made late payment of Employee's Contribution towards Provident Fund and EI on the different occasions amounting to Rs 21,202/-

The employee's contribution towards provident fund deposited is liable to be disallowed as per the provisions of section 36(i)(va) of the income tax Act, 1961. During course of assessment proceedings the assessee was requested to justify its claim along necessary evidences, in reply the assessee could not submit any details in support of claim. Hence, it is presumed that the assessee has nothing to say in this regard. Accordingly, a sum of Rs.21,202/- being late deposited to the Govt. A/c. is disallowed and added to total income of the assessee.

Disallowance u/s.14A to the tune of Rs.1,25,670/- were made.

3. Against the said order assessee preferred first statutory appeal before the learned CIT(A), who dismissed the appeal of the assessee.

4. Now appellant's appeal is before us.

5. We have gone through the relevant record and impugned order. In this case, as per the profit and loss Account, there is a loss of Rs.98,76,456/- and hence, there is no applicability of MAT u/s.115JB. As against the same, the learned Assessing Officer made an addition of Rs.1,46,872/- being:

- | | | |
|----|---|---------------|
| a) | disallowance u/s.14A r.w. rule 8D | Rs.1,25,670/- |
| b) | disallowance for late payment of PF/ESI | Rs. 21,202/- |

It is submitted that assessee has sufficient funds in the form of Capital and Reserves & Surplus, aggregating to Rs.10,66,04,000/- as against the total investment of Rs.13,24,100/-.

Assessee has sufficient investment fund of its own and these above details have submitted before the authorities below and assessee submitted that the investment made much earlier and they have submitted copy of the Accounts for year 2006-07, with relevant schedules as per Annexure-6, which also shows that investments have been made before this year only. In earlier year, on the similar facts, assessment order for A.Y.2009-10 has been passed u/s.143(3) and on the similar facts, no

addition has been made towards while working out disallowance u/s.14A r.w. Rule 8D.

Therefore, on the principles of consistency, the impugned addition made by the authorities below are not maintainable.

5.2 In support of his contention, assessee cited judgments of **Radhasoami Satsang Vs. CIT(193 ITR 321(SC))**: In this case, it held that in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee appellant should not have been reopened. Where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed the position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

H. A. Shah & Company vs. CIT(30 ITR 618)(Bom):

An earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived after due inquiry, if not facts are placed before the Tribunal.

CIT vs. Hindustan Motors Limited (192 ITR 619)(Cal):

It has been held that there must be substantial ground for one ITO to differ from the view taken by another ITO in earlier assessment.

In view of the above observations and judgments we delete the addition of Rs.1,25,760/-

5.3 So far addition of Rs.21,202/- being employee's contribution to Provident Fund & ESI which were deposited late but before the due date for filing the return of income u/s.139(1) of the I.T. Act is concerned. During the course of assessment proceedings assessee was requested to justify its claim along with necessary evidences but in reply assessee could not submitted his reply in detail. In support of its claim and even before us assessee could not give any reason that why he deposited the payment late.

In our considered opinion, amount of Rs.21,202/- will be confirmed.

6. In the result, appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on	27/10/2017
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Sd/-
(प्रमोद कुमार)
लेखा सदस्य
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 27/10/2017

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)-2, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad