

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH AHMEDABAD

BEFORE, SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER  
AND SHRI S. S. GODARA, JUDICIAL MEMBER

ITA No. 3431/Ahd/2014  
(Assessment Year: 2010-11)

Sharad Shyamsunder Rungta  
6, Dharnidhar Society, New Vikas  
Gruh Road, Paldi, Ahmedabad - 380007

Appellant

Vs.

The Dy. Commissioner of Income Tax,  
Circle – 11, 1<sup>st</sup> Floor, Narayan Chambers,  
Ashram Road, Ahmedabad - 380009

Respondent

PAN: ABHPR7773D

आवेदक की ओर से/By Assessee : Shri G. C. Pipara, A.R.  
राजस्व की ओर से/By Revenue : Shri V. K. Singh, Sr. D.R  
सुनवाई की तारीख/Date of Hearing : 18.12.2017  
घोषणा की तारीख/Date of  
Pronouncement : 29.12.2017

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

This assessee’s appeal for assessment year 2010-11 arises against the CIT(A)-XVI, Ahmedabad’s order dated 05.09.2014 in case no. CIT(A)-XVI/DCIT/Cir.11/011/13-14, upholding assessing officer’s addition making section 14A r.w.s Rule 8D disallowance of Rs.115665 in the nature of indirect proportionate interest in relation to its exempt income from dividends of Rs.1,64,340/-, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. We come to relevant facts. This assessee/individual draws income from salary, share of profits in partnership firm, house property income and income from other sources. He filed his return on 14.10.2010 declaring total income of Rs.20,31,620/-. The assessing officer noticed during scrutiny that the assessee had earned exempt income from dividends of Rs.164340 as well as claimed interest expenditure of Rs.3,23,715/-. The Assessing Officer invoked section 14A r.w.s Rule 8D of the Income Tax Rules to disallow the impugned proportionate interest expenditure coming to Rs.115665/- in assessment order dated 01.03.2013.

3. The CIT(A) affirms Assessing Officer's above findings as follows:

*"5.0 Effective ground of appeal No 2 is regarding addition of Rs. 1,15,665/- u/s. 14A of the Act. The Assessing Officer observed that the assessee had shown dividend income of Rs. 1,64,340/- during the year which was claimed as exempt. The assessee had also claimed interest expenditure of Rs. 3, 23, 71 5/-. Applying section 14A and Rule 8D of the IT Act and Rules, the A O disallowed Rs. 1,15,665/- u/s. 14A of the Act.*

*5.1 During appellate proceedings, the appellant made written submissions, relevant part of which is reproduced as under :-*

*".....*

- 1. At the outset, it is submitted that the impugned addition has been made entirely on the basis of surmises and conjectures as well as without proper consideration and verification of the facts of the case. It is contended that the entire observation of the A.O. and the exercise of working out the disallowance u/s.14A r.w.r. 8D is based on assumptions and not on hard facts:*
- 2. It is submitted that the AO while making the impugned disallowance on the basis of his discussion in the assessment order has conveniently ignored the binding decision of the Hon'ble Supreme Court in the case of CIT vs. Walfort Share & Stock Brokers (P.) Ltd. 326 ITR 1 (SC). The AO has thus proceeded to discuss the issue on various observations which prima facie appears to be typed in a mechanical manner without proper consideration and appreciation of the particular facts of the appellant's case and hence not in consonance with the law laid down by the Hon'ble Supreme Court in the above cited case.*
- 3. Without prejudice to above, it is submitted at the very outset that as evident from the AO's working of disallowance u/s.14A at Page No. 5 of the assessment order, there is no investment during the year. The AO has categorically mentioned that the investment as at 31/03/2010 is the same figure as at 01/04/2009 i.e. Rs.48,08,5727-. Hence, there being no investment during the year under consideration, the question of incurring any expenditure for earning exempt income during the year under consideration does not arise at all. Accordingly, no addition is warranted u/s.14A r.w.r. 8D on facts of the appellant's case.*
- 4. Without prejudice to above, it is submitted that the said investments are even other wise not made out of borrowed funds on which interest has been paid but*

has been made out of sufficient interest free funds and internal accruals available at the disposal of the appellant in the year of investment. That apart, it is submitted that no part of borrowed money had any direct link or nexus with the investments made by the appellant. The borrowings have been utilized for business purpose by way of capital introduction in the firm Pan Agro and Allied Inds. wherein the appellant is a partner.

5. That apart, it may be noted that the appellant did not incur any specific expenditure in earning of any exempt income during the year under consideration as explained hereinabove as well as no specific borrowing or expenditure as attributable to investment activities is made. Hence, no expenditure can be apportioned towards earning of exempt income in the year under consideration. On perusal of the assessment order and the observations of the AO, it is amply clear that except general observations about the applicability of the provisions of Section 14A and Rule 8D, there is not a whisper about any specific expenditure incurred in relation to exempt income. That apart, there is no satisfaction of the AO that the claim of the appellant is incorrect.
6. The appellant would now like to discuss the merits of the disallowance worked out by the AO on Page No. 8 of the assessment order.
  - (a) As regards disallowance as per Clause (i) of Rule 8D(2), it is submitted that the AO has accepted that no direct expenditure has been incurred for earning of exempt income.
  - (b) In as much as working of disallowance being interest expenditure which is not directly attributable to any particular income or receipt is concerned as per Clause (ii) of Rule 8D(2) is concerned, the Ao has made no disallowance under this Clause.
  - (c) Coming to the disallowance as per Clause (iii) of Rule 8D(2) i.e. on the basis of average value of investments, it is submitted that since there being no investment made during the year as also admitted by the AO, the question of incurring any expenditure on such investments does not arise. As a consequence, the applicability of Clause (iii) also does not arise at all.
7. Without prejudice to above factual position, it is contended that what merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct.
8. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to

*follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion.*

*In the instant case, the A.O. has not recorded any such satisfaction with reference to the facts of the case and having regard to the accounts of the assessee as explained hereinabove and hence even other wise the disallowance made is not justified....."*

5.2 *I have considered the facts of the case and the submissions made by the appellant At the outset, the facts of the case in CIT vs Walfort Shares & Stock Brokers Pvt Ltd are completely different and are not applicable to the case on hand. The CBDT recently issued Circular No. 5/2014, dated 11th February, 2014, wherein it has been clarified that disallowance under section 14A of the Act read with Rule-80 of the Income Tax Rules' 1962 needs to be made even in a case where the assessee has not earned exempt income during a particular year. In the said Circular, it has, inter-alia, been clarified that use of the word "includible" in heading to Section 14A and Rule 8D and use of phrase "income under the Act" under section 14A of the Act, instead of "income of the year", indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration. It has also been clarified in the said Circular that "legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, 'irrespective' of the fact whether any such income has been earned during the financial year or not". The facts of this case show that the appellant has earned exempt income during the year. No income can be earned in vacuum, and therefore proportionate expenses need to be disallowed as per procedure laid down. The disallowance made by the A O u/s. 14A is therefore upheld. In view of this, ground of appeal No 2 is dismissed."*

4. Heard both the parties vehemently reiterating their respective stands against and in support of the impugned interest disallowance made in relation to assessee's exempt income on the ground that the same represents proportionate interest expenditure under Rule 8D (2)(ii) of the Income Tax Rules. We notice that hon'ble jurisdictional high court's recent judgment in PCIT vs. India Gelatine & Chemicals Ltd. (2016) 66 taxmann.com 356 (Guj) holds that no such interest disallowance is to be made in case an assessee is having sufficient interest free funds. We keep in mind the said legal proposition to advert to relevant facts once again. The assessee's case throughout has been that the relevant investment amount of Rs.48,08,572/- continued as it is from 01.04.2009 in the nature of

opening figure. It further emerges from a perusal of the paper book that its capital account brought forward in relevant previous year reads a figure of Rs.94,09,301.47 followed by capital account amount in the nature of interest free funds of Rs.10,216,690.77 respectively i.e. admittedly more than the relevant investment amount. The same therefore sufficiently indicates that it is more than investment amount itself even if it is presumed that the impugned investments had been made in the relevant previous year. We therefore draw support from hon'ble jurisdictional high court's above referred decision to delete the disallowance in question of Rs.115,665/- made in both the lower proceedings u/s.14A r.w. Rule 8D of the Rules. The assessee's sole substantive ground is therefore accepted.

5. This assessee's appeal is allowed.

[Pronounced in the open Court on this the 29<sup>th</sup> day of December, 2017.]

Sd/-  
(PRAMOD KUMAR)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 29/12/2017

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।