

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2590/Ahd/2015
Assessment Year 2011-12**

Paushak Limited 5 th Floor, Administrative Building Accounts Department, Alembic Road, Baroda-390003 PAN: AAACD5006G (Appellant)	Vs	The DCIT, Circle-2(1)(2), Baroda (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Bandish Soparkar, A.R.**

Date of hearing : 24-11-2017
Date of pronouncement : 19-12-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-2, Vadodara dated 15-06-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act:

2. The assessee has raised following grounds of appeal:-

"The Appellant submits the following grounds

1. Disallowance u/s 14A of Rs. 6,43,932/-:

1.1 On the facts and circumstances of the case and in law, the learned CIT (A) erred in upholding the disallowance u/s. 14A read with rule 8D(2)(iii) of administrative expenditure amounting to Rs. 6,43,932/-.

1.2 The learned CIT (A) ought to have appreciated that the Assessing Officer had not reached appropriate satisfaction as required under law for invoking the provisions of S.14A.

1.3 Without prejudice to the above, disallowance u/s 14A should be substantially reduced."

3. In this case, return of income declaring income of Rs. 3,47,56,061/- was filed on 23rd September, 2011. Subsequently, the case of the assessee was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 30th August, 2012. During the course of assessment proceedings, the assessing officer has observed that assessee has earned dividend income of Rs. 73,64,061/- during the year under consideration and claimed this dividend income as exempt income u/s. 10(34) of the act to the extent of Rs. 73,22,691/-. The assessee has suo moto disallowed an expenditure of Rs. 50,000/- attributable towards earning of above exempt income. During the course of assessment proceedings the assessing officer has asked the assessee to explain why not the disallowance u/s. 14A r.w. Rule 8D should not be made in its case. The assessee has explained that it has not made any fresh investment during the year and all the investments were purchased long back. In the preceding assessment year it was substantiated that all the investment has been made out of the own fund of the company. The assessee has also submitted that the assessing officer has not made any disallowance in respect of interest expense while making assessment

u/s 143(3) of the act for AY2009-10 and AY 2010-2011. It was also stated that it has rightly made disallowance of Rs.50000/ u/s 14A of the act. The assessing officer has not accepted the explanation of the assessee and observed that assessee has not worked out the disallowance as prescribed in rule 8D of the income tax rule, 1962. He also observed that assessee has not provided any documentary evidence that the expenses incurred are not for earning tax free income. Consequently, the assessing officer has worked out the disallowance according to section 14A r.w. rule 8D to the amount of Rs. 6,93,932/-.

4. Aggrieved against this disallowance the assessee preferred appeal before the Id. CIT(A). The Id. CIT(A) has sustained the disallowance by stating that in assessee's own case for assessment year 2008-09 by invoking the provision of section 14A r.w. Rule 8D such disallowance was upheld. During the course of appellate proceedings before us, the learned counsel has submitted that the Co-ordinate Bench of the ITAT vide ITA no. 1040/Ahd/2013 in the case of the assessee itself on the identical issue decided the issue in favour of the assessee. On the other hand, Id. departmental representative relied on the order of the Id. CIT(A).

5. We have heard both the parties and perused the material on record. We have gone through the aforesaid decision of the ITAT decided in the case of the assessee itself in which it was held as under:-

“5. We have heard rival contentions. Case file perused. The sole dispute between both the parties is about correctness of the impugned administrative expenditure disallowance of Rs. 6,94,047/- made by both the lower authorities. The assessee’s case inter alia is that it has not incurred any expenditure qua earning of its exempt income, both the lower authorities have not rejected its books of accounts before invoking the impugned disallowance as held mandatory under section 14A(2) by hon’ble Delhi high court in Maxopp Investments vs. CIT (2012) 247 CTR (Delhi) (162) and further quotes a co-ordinate bench decision in ITA No. 1362 & 1032/Del/2013 Interglobe Enterprises Ltd vs. DCIT decided on 04-04-2014 holding that strategic investments made in group entity are not for earning exempt income so as to invoke such a disallowance in question. The assessee also cites hon’ble jurisdictional high court decision in (2015) 376 ITR 553 (Guj) PCIT vs. India Gelatine Chemical Ltd as well as (2015) 370 ITR 338 (Delhi) CIT vs. Taikisha Engineering India Ltd to buttress its above stated argument challenging no satisfaction arrived at by the lower authorities that its books of accounts stating no expenditure to have been incurred earning of its exempt income are not correct. The Revenue strongly supports the CIT(A)’s reasoning extracted hereinabove. We have given our thoughtful consideration to rival contentions. We come to ‘satisfaction’ aspect as mandated under section 14A(2) r.w. Rule 8D of the Income Tax Rules. There is no dispute that the Assessing Officer in his assessment order does not record the same so as to dispute assessee’s books of accounts recording no expenditure incurred for exempt income. The CIT(A) upholds Assessing Officer’s findings by observing that such a satisfaction need not be explicitly mentioned in assessment order as it can be deduced from the order itself. We find it to be not in tune with the specific provision in the act under section 14A(2). The legislature in its wisdom specifically envisages Assessing Officer’s satisfaction before invoking expenditure disallowance that an assessee’s books are not correct so far as they do not record any expenditure. We quote this statutory provision as well as the above stated case law that there has to be an explicit satisfaction and an Assessing Officer cannot simply brush aside the relevant books of accounts. Any violation thereof, in our considered opinion, would violate the legislative intent as well the legislation itself. We are accordingly of the opinion that the CIT(A)’s reasoning goes contrary to section 14A(2) as interpreted by various high courts hereinabove. The impugned administrative expenditure disallowance of Rs. 6,94,047/- made by both the lower authorities under Rule 8D(iii) is accordingly deleted.”

After considering the above facts, findings and the decision of the Co-ordinate Bench in the case of the assessee itself, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 19-12-2017

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 19/12/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तालम अ०मत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलअथ आधकरण,
अहमदाबाद