

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “B” BENCH**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
& SHRI S. S. GODARA, JUDICIAL MEMBER)**

**ITA. No: 2266/AHD/2016 & C.O. No. 165/AHD/16  
(Assessment Year: 2013-14)**

<b>DCIT, Circle-1(1)(2), Ahmedabad</b>	<b>V/S</b>	<b>M/s. Durgesh Impex Pvt. Ltd. B/1, 2<sup>nd</sup> &amp; 3<sup>rd</sup> Floor, Safal Profitaire, Corporate Road, Nr. Prahladnagar, Ahmedabad</b>
<b>M/s. Durgesh Impex Pvt. Ltd. B/1, 2<sup>nd</sup> &amp; 3<sup>rd</sup> Floor, Safal Profitaire, Corporate Road, Nr. Prahladnagar, Ahmedabad</b>	<b>V/S</b>	<b>DCIT, Circle-1(1)(2), Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AACCD 1075D**

**Appellant by : Shri Mudit Nagpal, Sr. D.R.  
Respondent by : Shri Rupesh Mehta, A.R.**

**(आदेश)/ORDER**

Date of hearing : 12 -04-2018  
Date of Pronouncement : 16-04-2018

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER**

1. This appeal by the Revenue and the cross objection of the Assessee are directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 29.06.2016

pertaining to A.Y. 2013-14. The appeal and the cross objection were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The first grievance of the revenue relates to the deletion of the addition of Rs. 1,30,319/- made on account of disallowance u/s. 14A read with Rule 8D.
3. The assessee is in the business of whole sale trading & manufacturing of Cotton, Cotton Base, Oil/ Cake, Gaur Gum and is also a Commission Agent and trading in derivatives.
4. On verification of the balance sheet, the A.O. found that the assessee has made investment in shares the income from which is exempt from tax. The A.O. also noticed that the assessee has claimed interest payment to the loans and has incurred other expenses. The A.O. found that the assessee has not made any disallowance u/s. 14A r.w. Rule 8D. The assessee was show caused to explain why disallowance should not be made as per the relevant provisions of the law.
5. On receiving no plausible reply, the A.O. proceeded by computing the disallowance u/s. 14A r.w. Rule 8D and the disallowance was computed at Rs. 2,48,709/-.
6. Assessee carried the matter before the ld. CIT(A) and strongly contended that it has not incurred any expenditure and therefore there is no need for any disallowance u/s. 14A r.w. Rule 8D. It was brought to the notice of the ld. CIT(A) that the outflow of interest was at Rs. 2.60 crores whereas the interest earned by the assessee is Rs. 4.22 crores and since there was a positive interest

income, the interest expenditure cannot be considered for the disallowance u/s. 14A of the Act. After considering the facts and the submissions, the ld. CIT(A) restricted the disallowance to Rs. 1,18,390/-.

7. Aggrieved by this, the revenue is before us. The ld. D.R. strongly supported the findings of the A.O. and relied upon the very same judgments which have been referred to by the A.O. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.
8. We have carefully considered the orders of the authorities below. Facts on record show that there is no dispute insofar as the earning of interest vis-à-vis incurring of interest expenditure are concerned, the interest earned is at Rs. 4.22 crores whereas interest expenditure are at Rs. 2.60 crores. This means that the interest earned by the assessee is in excess of the interest incurred by it. On these facts, in our considered opinion, disallowance on account of interest is uncalled for. However, at the same time, we find that some disallowance on account of administrative expenditure has to be made. The undisputed fact is that the assessee has earned dividend of Rs. 1,18,390/- and considering the quantum of dividend, it is fair enough to restrict the disallowance to the extent of the dividend income. Therefore, the ld. CIT(A) has rightly restricted the disallowance to Rs. 1,18,390/- and therefore no interference is called for. Ground no. 1 of Revenue's appeal and ground no. 1 of the cross objection are dismissed.
9. The second grievance of the revenue relates to the deletion of the addition of Rs. 35,29,200/- made on account of subsidy received from Government.

10. During the course of the scrutiny assessment proceedings, the A.O. noticed that the assessee has received promotional subsidy of Rs. 35,29,200/- which was not credited in the Profit and Loss account. The assessee was asked to justify its stand. In its reply, the assessee strongly contended that the subsidy received is on account of capital assets and is therefore a capital receipt and hence not taxable. The A.O. dismissed the contention of the assessee and made addition of Rs. 35,29,200/-.
11. Assessee agitated the matter before the ld. CIT(A) and reiterated that the subsidy is a capital receipt. Strong reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd. 306 ITR 392 and Sahney Steel & Press Works Ltd. 228 ITR 253.
12. After considering the facets and the submissions and drawing support from the various judicial judgments including those of the Hon'ble Supreme Court, the ld. CIT was convinced with the claim that the subsidy is a capital receipt and accordingly deleted the addition made by the A.O.
13. Before us, the ld. D.R. supported the findings of the A.O. and the ld. counsel supported the findings of the ld. CIT(A).
14. It is not in dispute that the assessee has received cash subsidy of Rs. 35.29 lacs from the Government of Maharashtra on a certain percentage of capital employed. It is also not in dispute that the subsidy has been given as an incentive for establishing/expansion of a unit and not given for meet any part of expenditure. The Hon'ble Supreme Court in the case of Ponni Sugars &

Chemicals Ltd. (supra) has held that if the object of the subsidy was to set up a new unit in a backward area to generate employment therein, the subsidy was to be treated on capital account. A similar view taken by the Hon'ble High Court of Delhi in the case of Bougainvillea Multiplex Entertainment vide order dated 02.02.2015. The Hon'ble High Court in the case of Sahney Steel & Press Works Ltd. (supra) has ruled that purpose for which subsidy is given is the deciding factor.

15. Considering the judicial decisions referred to hereinabove and various others discussed by the ld. CIT(A) in his order, we do not find any error or infirmity in the findings of the ld. CIT(A). The second grievance of the Revenue is also dismissed.

16. In the result, the appeal filed by the Revenue is dismissed.

17. Coming to the second grievance in the cross objection which relates to the addition of Rs. 56,160/- on account of deposit of EPF/ESIC. We find that the same has been deposited beyond the grace period. We find that this issue is now settled in favour of the revenue and against the assessee by the judgment of the Hon'ble Jurisdictional High Court of Gujarat in the case of GSRTC 366 ITR 170.

18. Respectfully following the same, ground no. 2 of cross objection is dismissed.

19. Ground nos. 3 & 4 are in support of the order of the ld. CIT(A) and needs no separate adjudication.

Order pronounced in Open Court on 16 - 04- 2018

Sd/-

**(S. S. GODARA)**  
**JUDICIAL MEMBER True Copy**  
Ahmedabad: Dated 16 /04/2018

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad