

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, AHMEDABAD**

सर्वश्री राजपाल यादव न्यायिक सदस्य एवं वसीम अहमद, लेखा सदस्य, के समक्ष।  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.43/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2013-14)

DCIT, Cir – 1(1)(2), Ahmedabad.	<b>बनाम/ Vs.</b>	Dcom System Ltd., No.28, Vraj Vihar – 6, Satellite, Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCD 4827 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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

सुनवाई की तारीख / Date of Hearing	25/05/2018
घोषणा की तारीख /Date of Pronouncement	31/05/2018

**आदेश / ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the appellate order of the Commissioner of Income Tax(Appeals)-1, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-1/DCIT, Circle-1(1)(2)/290/2015-16 dated 27/10/2016 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 29/01/2016 relevant to Assessment Year (AY) 2013-14.

- 2 -

2. The grounds raised by the Revenue per its appeal are as under:

*“That the ld. CIT(A) erred in law and on facts in deleting the addition of Rs.92,52,234/- made on account of disallowance u/s. 14A r.w.r. 8D of the Act.”*

*On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.*

*The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.”*

3. The solitary issue raised by the Revenue in this appeal is that Ld. CIT(A) erred in confirming the addition made by the AO for Rs.92,52,234/- under the provision of Section 14A r.w.r 8D of the Income Tax Rules.

4. Briefly stated facts are that the assessee is a limited company and engaged in the business of contract, sub-contract and trading of equipments. The assessee during the year has earned dividend income of Rs.5,28,843/- only, which was claimed as exempted income u/s 10(34) of the Act. The assessee in its computation of income has disallowed the entire amount of dividend income under the provisions of Section 14A of the Act.

The assessee before the AO also claimed that the disallowance u/s 14A r.w.r. 8D cannot exceed the amount of dividend income. The assessee in

- 3 -

support of his claim *inter alia* relied on the order of this Hon'ble Tribunal, Ahmedabad in the case of Chudgar Ranchhodlal Jethalal vs. DCIT in ITA No.245/Ahd/2013.

However, the AO was of the view, disallowances should be made in pursuance to the provision of Section 14A r.w.r. 8D of the Income Tax Rules and same can exceed the amount of dividend income. Accordingly, the AO invoked the provision of Rule 8D of the Income Tax Rule and worked out the disallowance as under:

Sr. No.	Particulars	Amounts
1.	Direct Expenses	Nil
2.	Interest Expenses	68,52,853/-
3.	Administrative Expenses	29,28,224/-
Total		97,81,077/-

Accordingly, the AO disallowed the remaining amount of Rs.92,52,234/- after adjusting the amount of Rs.5,28,843/-, which was already disallowed by the assessee in its computation of income. The amount disallowed u/s 14A r.w.r. 8D for Rs.92,52,234/- was added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to Ld. CIT(A) who has deleted the addition made by the AO by observing as under:

*“2.3. I have carefully considered the Assessment Order and the submission filed by the Appellant. The Assessing Officer has made disallowance under section 14A r.w.r. 3D of the I.T. Act and similar*

*disallowance was made in A.Y. 2012-13 wherein CIT(A)-1 vide order dated 26<sup>th</sup> May, 2016 has held as under:-*

*“6.4. I have carefully considered the Assessment Order and submission filed by the Appellant. The brief facts of the issue are that the appellant had earned dividend of Rs.29,90,000/- which was claimed as an exempt income but added to the total income while calculating the total income in the computation of income filed with the Return of Income by the appellant. The Assessing Officer has observed that appellant has made huge investments and following the decision of Hon'ble Bombay High Court in case of Godrej & Boyce mfg. Co. Ltd., disallowance u/s 14A r.w. Rule 8D is required to be made. He further observed that appellant must have incurred administrative expenditure which is attributable to investment portfolio. He further retted upon decision of Delhi special bench in case of Cheminvest Ltd. and observed that for the purpose of disallowance u/s 14A, there is no requirement that actual income need to be earned. Therefore, invoking the provisions of Section 14A, the AO After considering the assessee's disallowance of Rs. 29,90,000/- made in the statement of income, the total disallowance of Rs.65,54,398/- [9544398 - 2990000] is disallowed u/s. 14A of the Act.*

*During the course of appellant proceedings, the AR of the appellant vehemently argued that the disallowance u/s 14A should be restricted to the exempt income earned during the year. The appellant has cited many decisions in his favour (supra) to substantiate his stand. I found considerable force in this contention of the appellant Neither the AO nor the appellant has established the nexus between the funds and the Investments, In these circumstances, in the interest of natural justice and in absence of clear cut finding by AO with regard to the nexus, the disallowance should be restricted to the exempt income. Hon'ble ITAT, Mumbai had an occasion to deal with such an issue in case of Daga Global Chemicals Pvt. Ltd. Vs. ACIT (ITA No.5592/Ahd/2012)(dtd.01.01.2015) in which it was held that the disallowance u/s 14A r. w. r. 8D cannot be made in excess of exempt income. Hon'ble Ahmedabad ITAT in the case of Chudgar Ranchodlal Jethalal v/s DCIT in ITA.245/AHD/2013 and Hon'ble Delhi High Court in the case of Joint Investments*

- 5 -

*Pvt. Ltd. v/s CIT in ITA 117/2015 has also held that disallowance u/s 14A r.w.r. 8D cannot be made in excess of exempt income- Following the above decisions, the disallowance is restricted to the dividend income earned by the appellant As the appellant has himself has disallowed Rs.29,90,000/-(total tax free income) while filing the return of income, the additional Rs.65,54,398/- in excess of Rs.29,90,000/- disallowed by the A.O. is hereby deleted. Accordingly, the ground of appellant is allowed".*

*After going through the facts of the case, it is seen that the facts during the year is identical to the previous year in the case of disallowance under sect/on 14A r. w.r 8D of the I.T. Act, the A.O. is directed to delete the addition so made of Rs.92,52,234/-. **This ground of appeal is allowed.**"*

Being aggrieved by the order of the Ld. CIT(A) Revenue is in second appeal before us.

Ld. DR and AR before us relied on the order of the authorities below as favorable to them.

6. We have heard the rival contentions and perused the materials available on record. At the outset, we find that the issue on hand has already been decided by this Tribunal in favour of the assessee in the case of *Chudgar Ranchodlal Jethalal (supra)*, wherein, it was held as under:

7. *"We have heard the rival submissions and perused the material on record. We find that the claim of weight shortage expenses was disallowed by the A.O and the disallowance was confirmed by ld. CIT(A) by following his predecessor order for A.Y. 07-08. Against the order of CIT(A) for A.Y. 07-08, Assessee had preferred appeal before Hon'ble ITAT. We find that the Co-ordinate Bench of Tribunal in ITA*

*NO. 1008/AHD/2011 for A.Y. 07-08 (order dated 04.04.2014) decided the issue in favour of Assessee by holding as under:-*

*1. Learned CIT(A) has erred in law and in facts in confirming action of AO in disallowing Rs.5,38,121/-, being weight shortage expenses. Both the lower authorities erred in ignoring the evidences produced by the appellant in the form of correspondences with the parties and debit notes issued by the parties. Ld. CIT(A) ought to have deleted the disallowance.*

*3. Apropos to ground No.1, the Id.counsel for the assessee submitted that the assessee is engaged in trading of ready cotton bales since last more than 21 years and the debit notes were raised by the concerned parties. The Id.counsel for the assessee further submitted that there is no dispute that the material was weighed and transported and during the course of transit, there was weight loss. The Id.counsel for the assessee submitted that the authorities below were not justified in disallowing the genuine expenses.*

*3.1. The ld.Sr.DR submitted that the assessee has been engaged in this line of business for many years and the assessee has never claimed this kind of expenses in earlier years. He further submitted that the assessee has not given any evidence in support of its claim that there was loss of weight.*

*3.2. In rejoinder, the ld.counsel for the assessee submitted that the evidences were placed on record; namely, the ledger account of weight shortage expenses, the debit notes raised by the concerned parties. The ld.counsel for the assessee submitted that merely because the assessee has claimed this kind of expenditure for the first time and it cannot be the sole ground for making disallowance.*

*4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the AO as well as the Id.CIT(A) has disallowed the expenditure on the basis that in earlier year the assessee has not claimed such kind of expenditure. In our considered view, since the assessee has placed on record the debit notes raised by various parties to whom the material was supplied, therefore the authorities below were not justified in disallowing the expenses claimed by the assessee. We therefore direct the AO to delete this addition. Accordingly, ground raised by the assessee is allowed.*

*8. Before us, Revenue has not brought on record any material to demonstrate as to how the decision of Hon'ble Tribunal for A.Y. 07-08*

- 7 -

*in Assessee's own case would not be applicable to the facts of the case for the year under appeal more so when ld. CIT(A) himself has noted that identical issue arose in A.Y. 07-08 and had followed the order of his predecessor. In view of the aforesaid facts and respectfully following the decision of the co-ordinate Bench of the Tribunal, this ground of Assessee is allowed."*

Respectfully following the same, we do not find any reason to interfere in the order of Ld. CIT(A) hence, ground of appeal of the Revenue is dismissed.

**7. In the result, Revenue's appeal is dismissed.**

<b>This Order pronounced in Open Court on</b>	<b>31/05/2018</b>
---	-------------------

Sd/-  
(राजपाल यादव)  
न्यायिक सदस्य  
(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad; Dated 31/05/2018

*Priti Yadav, Sr.PS*

Sd/-  
(वसीम अहमद)  
लेखा सदस्य  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

**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)-1, 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