

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

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

**ITA No. 1159/Ahd/2014  
Assessment Year 2010-11**

Ashutosh Yaswant Shukla, 2406, Phase IV GIDC Estate, Vatva, Ahmedabad- 382440 PAN: AFBPS1349J (Appellant)	Vs	The DCIT, Circle-1, Ahmedabad-3800015 (Respondent)
--	----	---

**Revenue by: Shri Prasoon Kabra, Sr. D.R.  
Assessee by: Shri Pramod Kedia, A.R.**

Date of hearing : 04-06-2018  
Date of pronouncement : 25-06-2018

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-II, Ahmedabad dated 20-02-2014, 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:-

*"Your Appellant being dis-satisfied with the order passed on 20-02-2014 (and received by us on 13-03-2014) by the learned Commissioner of Income Tax (Appeals)-II, Ahmedabad (hereinafter referred to as "Learned CIT") presents this appeal against the same on the following amongst other grounds :-*

*1. The learned CIT erred in facts and in law in observing that the Net Profit of Rs.52,09,211/- earned by the appellant during the year included the exempt income of Rs.10,40,732/-. The said observation is factually incorrect and the same may please be so held now.*

2. *The learned CIT erred in facts and in law in stating that some exempt income has also been shown in Proprietary Business of the appellant. The said statement is not true as no amount of exempt income of Rs. 10,40,732/- earned by way of dividend and long term capital gains is credited in the books of accounts of Proprietary Business of the appellant as can be seen from the Annual Accounts for FY 2009-2010. Your appellant submits that the same may be held so now.*
3. *The learned CIT erred in facts and in law in upholding and justifying the invocation of the Provision of section 14A/Rule-8D by the learned Assessing Officer regarding the amount disallowed as per Rule 8D.*
4. *The Order passed by the Learned CIT on 20-02-2014 confirming the addition of a sum of Rs.347514/- u/s 14A is entirely unjust, erroneous and contrary to the law and facts and therefore the same may please be- cancelled and the demand be deleted. It is submitted that the same be so held now."*

All the grounds of appeal are inter-connected to the same issue therefore the same are adjudicated by this common order as follows.

3. The brief fact of the case is that the return of income declaring income of Rs. 53,37,460/- was filed on 17<sup>th</sup> Sep, 2010. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 23<sup>rd</sup> Sep, 2011. During the course of assessment proceedings, the assessing officer observed that assessee earned dividend income of Rs. 8,59,629/- and exempt capital gain of Rs. 1,81,103/- which was exempt income not forming part of total income. He also noticed that assessee has made investment to the amount of Rs. 1,57,19,060/-. He has also stated that as per balance sheet, assessee has owned capital of Rs. 2,47,42,752/- and has made borrowings to the amount of Rs. 3,24,82,547/-. He has stated that assessee has incurred interest expenses of Rs. 16,27,165/-. He has also observed that net profit of Rs. 52,09,211/- is also included an amount of Rs. 10,40,732/- as exempt income which was not part of total income. Consequently, the assessing officer has computed expenditure of Rs. 3,47,519/- according to section 14A r.w. Rule 8D of the I.T. rule incurred towards earning exempt income.

4. Aggrieved assessee filed appeal before he Id. CIT(A). The Id. CIT(A) has sustained the disallowance made by the assessing officer stating that assessee has debited interest expenses of Rs. 16,27,165/- on the borrowed funds. He held

that there is mix up of fund and unless the date-wise details were maintained to show that there was relationship of borrowed fund and the investment in shares the disallowance made by the assessing officer u/s. 14A r.w. Rule 8D cannot be said that it is in- appropriate.

5. We have heard the rival contentions and perused the material on record. During the course of assessment proceedings, the assessing officer has noticed that the assessee earned exempt as per the return of income filed as under-

(i)	Dividend	Rs. 8,59,629/-
(ii)	Capital gain	Rs. 181103
		õ õ õ õ õ õ
		10,40,732

The assessing officer noticed that the assessee has made investment of Rs. 1,57,19,060/-. There was borrowing of Rs. 3,24,82,547/- and interest expenses of Rs. 16,27,165/-. Therefore, the assessing officer has disallowed an expenditure of Rs. 3,47,514 towards exempt income computed u/s. 14A of the act r.w.s Rule 8D of the I.T. Rule. The Id. counsel pleaded that the assessee has maintained separate books of account for his business operations and income generated from his personal investments have been calculated separately. He has also contended that the exempt income was not formed part of the P & L a/c of the assessee, therefore, no disallowance u/s. 14 should have been made by the assessing officer. After considering the above facts and material on record, we find there was no material on record which can demonstrate the earning of exempt income separately and there is no bifurcation of interest expenditure incurred by the assessee. We are of the view that the assessee has not substantiated his claim of earning of exempt income outside the P & L and balance sheet with supporting material before the lower authorities. Therefore, in the interest of justice, we restore this issue to the file of the assessing officer for

re-adjudicating a fresh after verification/examination of the supporting detail furnished by the assessee after affording adequate opportunities to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25-06-2018

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 25/06/2018**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

आदेश का प्रतिलिपि अप्रेषित / 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 अपील अाधिकरण,  
अहमदाबाद