

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

**(BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1924/AHD/2016 & C.O. No. 06/AHD/18
(Assessment Year: 2010-11)**

Income Tax Officer, Ward-1 (1)(1), Ahmedabad	V/S	M/s. Adani Welspun Exploration Ltd. Adani House, Nr. Mithakhali Six Road, Navrangpura, Ahmedabad-380002
(Appellant)		(Respondent)

PAN: AAFCA 3786P

**Appellant by : Shri S. K. Dev, Sr. D.R.
Respondent by : Shri Biren V. Shah, A.R.**

(आदेश)/ORDER

Date of hearing : 18 -09-2018

Date of Pronouncement : 25 -09-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Revenue is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 30.05.2016 pertaining to A.Y. 2010-11 and C.O. has been filed by the assessee. Department has taken following ground:

“ That the ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 4,64,56,286/- made u/s. 14A r.w.r. 8D of the Act.”

2. Briefly stated the facts of the case are that the appellant in its statement of fact has made following submission. During the course of assessment proceedings, assessee was asked to explain the views in respect of disallowance u/s. 14A of the Income Tax Act and in its claim of assessment year 2010-11, the assessee vide its letter dated 29.12.2014 has contended that:

i) the investments in mutual funds were made as to reduce overall interest cost exposure and not to earn exempt income, disallowance u/s.14A shall not be mechanically invoked.

ii)Dividend income earned from investment in mutual fund has actually reduced the total interest cost exposure to the tune of Rs.30,13,669/- and therefore, the same was capitalized.None of the expenses have been claimed by the assessee as deduction. Therefore, the question of disallowance of the expenses does not arise at all.

iii)the balance appearing of investment investments in mutual funds as on 31.03.2010 were largely pertaining to investment made on last day of financial year, hence interest cost attributable to one day only shall be subject matter of disallowance.

iv)for the remaining investment of approximately Rs.2.02 crore, the assessee company was having sufficient interest free shareholders funds for Rs.4.84 crore approximately. Therefore, on such investments, disallowance u/s.14A shall not be invoked,

v)disallowance u/s.14A shall not exceed exempt income of Rs.30,13,6697- looking to the peculiar facts of the case

5. The assessee's contention is considered carefully but the same is not acceptable keeping in view the Board's Circular No.5/2014 dtd. 11th February, 2014, which emphasis even in cases where taxpayer has not earned any exempt income, provisions of section 14A and rule 8D are applicable. In this case, the assessee itself has admitted that investment is made, has earned dividend income on investments. It is immaterial whether the investment is made on the first day or last day or even in between the accounting period. The only condition prevalent is

the investment. Further the assessee has made investment of Rs.2.02 crore where the provisions of Rule 8D(2)(ii) and 8D(2)(iii) are attracted.

It would be pertinent to mention here that although expenses have not been claimed in the return of income, in future when the company starts showing income, the capitalized cost which includes interest expenses of Rs. 10.87 crore, would be adjusted against the receipts. Therefore, the interest expenses needs to be proportionately disallowed by applying provisions of section 14A of the Act as the assessee company has apportioned borrowed funds towards investing in equity/mutual funds from which the assessee has earned income which is subsequently claimed as exempted income.

It is evident from the Balance Sheet that huge amount of the borrowed fund (Rs.142.02 crore as on 31.3.2010) is invested in equity, units, mutual fund etc. It can be seen that substantial interest (Rs.10.87 crore) has been paid on the borrowing and is claimed under the capitalized project development expenses. Just because the assessee company has reduced the dividend income of Rs.65,58,994/- from capitalized expenditure, it would not be awarded any immunity from disallowance u/s.14A of the Act which works out to Rs. 4,94,69,955/-. It may be stated that there was a mistake in working out the 14A disallowance, the figure of Rs.2,67,59,731/- as worked out earlier and provided to the assessee. Disallowance u/s.14A can be made even when there is no dividend receipt if application of interest bearing fund is towards investment having potential to earn exempted income. Also there is no such provision under the Act whereby the otherwise exempted dividend can be offered to tax to avoid disallowance u/s.14A. Therefore, the disallowance u/s.14A ought to have been made considering the investment made by the assessee in Mutual Funds.

In view of the above findings, I hold that the provisions of section 14A r.w.r. 8D are clearly attracted and therefore, the disallowance u/s.14A of the Act as per Rule 8D is worked out as under

(i)	<i>The amount of expenditure directly relating to income which does not form part of total income;</i>		0
(ii)	<i>In a case, where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely - $A \times B/C$ - Where</i>		
(A)	<i>amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;</i>	108766082	45420438

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A.Y. 2010-11

	(B)	<i>the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year;</i>						
	<i>P.Y. Invest.</i>	199545325	<i>C.Y. Invest.</i>	142026170 ⁴	<i>Total</i>	16198070 ²⁹	2	809903514 ^{.5}
					<i>PY+CY</i>			
	(C)	<i>the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;</i>						
	<i>P.Y. Assets</i>	317727427 ⁷	<i>C.Y. Assets</i>	70159772 ⁷	<i>Total</i>	38788720 ⁰⁴	2	193943600 ²
					<i>PY+CY</i>			
	(«)	(A)	(B)	(Q)			AXB/ C	
	<i>Interest . Exp. (A)</i>	108766082	<i>Avg. Invest. (B)</i>	80990351 ⁵	<i>Avg. Assets (Q)</i>	19394360 ⁰²	<i>Total - AXB/C</i>	45420438
	(iii)	<i>An amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day of the previous year.</i>						
		<i>Aveg. Investment</i>	809903514.5	0.5	100	404951 ⁸	4049518	4049518
		AGGREGATE OF (i) + (ii) + (iii)						
								49469955

Disallowance U/S.14A = Rs. 4,54,20,438+40,49,518 = Rs.4,94,69,955/-.

3. Against the disallowance of Rs. 4,94,69,955/-, assessee preferred first statutory appeal before the Id. CIT(A) who granted relief to the appellant.

4. Now department is before us.

5. We have gone through the relevant record and in the impugned order. In this case, no scrutiny of the accounts have been done by the A.O. and whatever income has been earned by the assessee was not exempted income where section 14A read with Rule 8D could have been applied. And in this case, assessee had taken loan for specific purpose, hence, interest on term loan cannot be considered for making proportionate disallowance.

6. In support of its contention, assessee cited an order of Co-ordinate Bench in ITA No. 1948/Ahd/2016. In this case, solitary issue was disallowance of Rs. 2090781/- u/s. 14A of the Act against tax free dividend income received by the assessee. Assessee referred to financial statements and Profit & Loss account in particular and submitted that assessee has not incurred any revenue expenditure during the year which calls for disallowance and entire expenditure incurred is in the nature of capital expenditure and has been capitalized as capital work in progress being Project Development Expenditure and ITAT granted relief to the assessee which following observations:
 5. *We have heard the rival submissions. We find merit in the appeal of the assessee on first glance. In the absence of any expenditure incurred of revenue nature, the disallowance of the same and addition to the total income is not permissible. Section 14A has no application for adjustments towards capital expenditure. The scope and sphere of section 14A of the Act is restricted to the computation of total income which means computation of chargeable income. Its scope does not extend to encompass expenditure of capital nature which has bearing in computation of chargeable income. Therefore, we find considerable force in the plea of the assessee.*
 6. *Accordingly, we direct the A.O. to reverse the effect of disallowance made u/s. 14A of the Act.*
 7. *In the result, appeal of the assessee is allowed.*

7. Respectfully following the aforesaid judgment of Tribunal, we dismiss the appeal of the Revenue.

8. So far C.O. 06/Ahd/2018 is concerned, grounds has been taken:

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the validity of the reassessment proceedings initiated u/s.147 of the I.T. Act.*
2. *On the facts and in the circumstances of the case, the learned CIT(A) erred in holding that from out of total disallowance of Rs.4,94,69,955 made by the Assessing Officer U/S.14A of the I. T. Act, a sum of Rs.30,13,669 was required to be sustained which is to the extent of the quantum of exempt dividend income.*
3. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance of Rs.3,94,222 made by the Assessing Officer in respect of Fringe Benefit Tax (FBT) which is capitalized by the assessee-company under the head "Project Development Expenditure".*
4. *The respondent craves leave to add, alter, amend and/or withdraw any ground or grounds of cross objections either before or during the course of bearing of the same.*

9. Ground no. 1 & 3 are not pressed the same is dismissed as not pressed.

Ground no. 2 is supportive. Thus the same is dismissed.

Order pronounced in Open Court on	25 - 09- 2018
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Sd/-

Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 25/09/2018

(MAHAVIR PRASAD)
JUDICIAL 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