

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

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

**ITA. No: 474/AHD/2015
(Assessment Year: 2010-11)**

Aangan Agrotech Exports Pvt. Ltd. 31, Madhuban Tower, B/h. Town Hall, Ellisbridge, Ahmedabad- 380006	V/S	Income Tax Officer, Ward- 1 (1), Ahmedabad
(Appellant)		(Respondent)

PAN: AADCA 1828N

**Appellant by : Shri Afaq Saiyed, AR
Respondent by : Shri S. K. Dev, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 18 -09-2018

Date of Pronouncement : 08 -10-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 23.12.2014 pertaining to A.Y. 2010-11 and following grounds have been taken:

1. *The learned CIT(A) has erred in law as well as on facts in partly confirming the disallowance U/S.14A read with Rule 8D of the IT. Rules, 1962 to the extent of Rs.2,85,408/- out of total addition of Rs.8,01,881/- made by the AO while applying Rule 8D(2)(iii) with reference to indirect expenses without proper consideration and appreciation of facts and settled legal position. Thus, the impugned addition of Rs.2,85,408/- also requires to be deleted.*

1.2 *The learned CIT(A) has further erred in not appreciating the fact that the investments have not been made out of borrowed funds but out of own funds and keeping in view the fact that the AO has failed to establish that interest bearing funds were in fact invested in acquisition of investments which yielded tax free income or that the appellant had incurred any specific expenditure for earning exempt income, the question of applicability of the provisions of Section 14A does not arise at all. Accordingly, the entire addition of Rs.8,01,881/- requires to be deleted.*

2. *The learned CIT(A) has erred in confirming the addition of Rs.30,176/- on account of delayed payment of employee's contribution to P.P. That since there are decisions both in favor of the Appellant and the Revenue, the view in favor of the appellant ought to have been accepted as per settled principles of law more particularly when the SLP against the decision of the Hon'ble Gujarat High Court relied upon by the Id. CIT(A) has been admitted by the Hon'ble Supreme Court. The impugned addition of Rs.30,176/- thus requires to be deleted.*

2. Briefly stated the facts of the case are On verification of the Profit and Loss account it was observed that under the head 'Other income' as per Schedule - 11 to the final accounts, the assessee has earned dividend income of Rs. 1,82,660/- on shares and Rs. 33,81,672/- on mutual funds. The assessee has also earned profit of Rs. 3,75,593 on sale of Mutual Fund units and claimed as exempt u/s 10(38) of the IT. Act. These earnings have been treated as exempt in the computation of income.
3. It was observed that the assessee has not disallowed any expenditure on its own which is related to earning the said exempt income. During the course of assessment proceedings the assessee was asked to state as to why the provisions of section 14A r.w.r 8D should not be applied considering the facts of the case.

The assessee has stated vide submission dtd. 01.09.2012 that the investments in shares and mutual funds have been made out of own fund of the company and company has not incurred any expenditure to earn exempt income. The assessee has its own fund of Rs. 11 crores or (more and investment is made of Rs. 5.77 crores which is also old and no investment during the year under consideration. Vide letter dated 9-11-2012 it is stated that interest paid to Bank of India on Term loan has been taken for purchase of Plant & Machinery and also produced relevant Bank statement showing nexus of Term loan used for the same. It has also quoted certain Court Judgements in support of claim. It is further stated that in view of this fact, no disallowance on account of expenses related to earning exempt income is required to be made u/s 14A.

4. The contentions of the assessee are perused. The assessee has incurred interest expenses of Rs. 67,52,577/- hence the argument regarding availability of interest free funds in the form of share capital is out of place. This fact attributes, the interest expenses to the investment activities of the assessee which has yielded exempt income. Further, the intention of the parliament is to quantify various expenses including interest which can be attributed as channeled for earning of exempt income albeit on a notional basis. These would include usage of assets like computers, office equipments, ^stationary, financial -charges, manpower etc. for earning such income/making such investments.
5. During the year under consideration the assessee has actively purchased and sold Mutual fund units and shares. As per the AIR information the assessee has bought new mutual fund units worth 71.67 lacs during the year. From Balance sheet comparison with the preceding year, it is observed that the assessee has

sold MF units of Rs. 1.01 Crore and has bought new units worth Rs. 13 lacs. The assessee has also bought shares worth 1.39 crores. It is obvious that owing to the said activity the assessee has earned exempt dividend income of Rs. 35,64,332/-. The expenses debited to the profit and loss account are therefore required to be attributed on a notional basis to the earning of exempt income, since no separate account have been maintained for business and investment activities, while making investment both borrowed as well as own funds were used.

6. In the case of Godrej Boyce Mfg. Ltd. (Mum) (2010) 194 TAXMAN 203 (Bom.) / (2010) 234 CTR 1 (Bom.) / (2010) 328 ITR 81 (Bom.) the Hon'ble High court after, discussing in length, the applicability of the principle of apportionment for the purpose of section 14A has also been upheld by the Hon'ble Supreme Court in the case of M/s. Walfort Share & Stock Pvt. Ltd. (SC) (2010) 192 TAXMAN 211 (SC) / (2010) 233 CTR 42 (SC) delivered on 06.07.2010.
7. From the above, it is clear that 14A is applicable in case of composite and indivisible business which may result in taxable and non - taxable income, which may be incidental to the main business.
8. Since the Hon'ble Supreme Court has held that the apportionment has to be done for expenses towards taxable and non - taxable income, it impliedly means that section 14A is applicable to all heads of income, in any case, the view of Hon'ble Supreme Court would be binding. It may be mentioned that the issue has been specifically dealt at length and has been held in favour of

Revenue in the majority decision of M/s. Daga Management Pvt. Ltd. & Others (2009) 117 ITD 169 (Mum.)

9. It is also noted that the various other issues have been extensively covered and decided in favor of the Revenue in the case of ITO V/s. M/s. Daga Capital Management Pvt. Ltd. vide ITA No. 8057/Mum/03 for A.Y. 2001-02 by Hon'ble Mumbai ITAT and Hon'ble High Court Decision in the case of Godrej and Boyce Mfg. Ltd. (Mum.) in ITA No. 626 of 2010 and WP No. 758 of 2010.
10. On examination of the balance sheet it is observed that the assessee has substantial investments in shares and mutual funds. As on 31.03.2010 the worth of these investments is Rs.5.77 crores which was Rs. 5.64 crores as on 31.03.2009. The assessee has also earned long term capital gains owing to the said investment activities. In the profit & Loss account it is found that the assessee has claimed several expenses including interest and it is not possible to determine the amount of such expenditure related/attributable to earning of such exempt income. Considering the quantum of investments made by the assessee it is apparent that part of these expenses can be categorically attributed to earning of exempt income.
11. As per the provisions of section 14A, no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. The said exempt income has arisen owing to the investment activities of the assessee. The exact amount of expenditure which can be treated as meant for earning this particular income which is exempt from tax cannot be determined straight away. In order to determine such

notional expenditure out of total expenditure, the provisions of rule 8D are required to be applied in this case. Considering evidence produced regarding interest on Term loan acquired for purchase of Plant & machinery, interest on Term loan is excluded for calculating disallowance as per Rule 8D.

12. Accordingly, the quantification of expenses in relation to income not includible in total income is calculated as per rule 8D as follows:

As per rule 8D (2) (i)	:	Rs. Nil
As per rule 8D(2)(ii)	:	Rs. 516473
As per rule 8D(2) (iii)	:	0.5 of Average value of Investments appearing in the Balance sheet as on 31.03.2009 and 31.03.2010 (0.5% of Rs. 5,70,81,7937-. = Rs. 2,85,4087-)
Total	:	Rs. 8,01,881/-

The expenditure to the extent of Rs. 8,01,881/- is therefore considered incurred in relation to income not forming part of the total income

(Addition Rs. 8,01,881/-)

13. On examination of the Audit report and accounts thereof it was found that on several instances these payments have not been made before the due date. The assessee has stated that since all the payments of PF have been made on time and before filing return of income, the same are allowable as a deduction u/s 43B.

14. The assessee has missed a point on this issue. The provisions of section 43B are applicable as far as the employer's contribution is concerned. As per the provisions of section 2(24) (x), income includes any sum received by the assessee from the employees as contribution to any provident fund or

superannuation fund or any fund set up under the provisions of the Employees provident Fund Act 1948 or any other fund for the welfare of such employees. Further as per section 36(1)(va), such income which is includable as income u/s 2(24)(x) is deductible if such sum is credited by the assessee to the employees account in the relevant fund on or before the due date. In the assessee's case it is found that during the year, PF contribution of Rs. 30176 have been paid after the due dates. Since the provisions of section 36(1)(va) are not fulfilled, an amount of Rs.30176/- is treated as income of the assessee u/s 2(24)(x).

15. Against the addition of Rs. 801881/- u/s. 14A read with Rule 8D and addition of Rs. 30,176/- was treated as income of the assessee u/s. 2(24)(x), assessee preferred first statutory appeal before the ld. CIT(A) who confirmed the order of the A.O.
16. We have gone through the relevant record and impugned order. It is not disputed the fact that appellant has claimed exempt income of Rs. 35,64,332/- and has not computed as well as disallowed any expenditure relating to earning of such income.
17. The appellant has claimed that it has not taken any loan in order to earn dividend income rather he had reserve and surplus of Rs. 113035153/- and made investment in shares and mutual funds of Rs. 2,40,00,000/- and his contention was then in these circumstances, addition u/s. 14A read with Rule 8D should not be made addition as per Rule 8D(2)(ii) of Rs. 5,16,473/-. But this fact has not been examined by the lower authorities. Thus, A.O. to see the sufficiency of interest free funds if appellant is having sufficient interest free

funds then addition of Rs. 5,16,473/- to be deleted. However, addition to the tune of Rs. 2,85,408/- to be confirmed.

18. So far second ground with regard to late of provident fund account of the employees in the relevant fund. This case is against the assessee by the Jurisdictional High Court in the case of GSRTC (supra). Thus, respectfully following the Hon'ble Gujarat High Court order, we dismiss this ground of appeal as well.

19. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on	08- 10- 2018
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Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 08/10/2018

Sd/-

(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