

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

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

**ITA Nos. 226 & 227 /Ahd/2017
Assessment Year 2012-13 & 2013-14**

The DCIT, Anand Circle, 204, 3 rd Floor S.P. Patel Complex, Near Old C.K. Hall, Mayfair Road, Anand- 388001 (Appellant)	Vs	M/s. Anupam Industries Ltd, 138, GIDC Estate, Vithal Udyognagar, Anand- 388121 PAN: AABCA9602Q (Respondent)
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**Revenue by: Shri Vinod Tanwani, Sr. D.R.
Assessee by: Shri M.K. Patel, A.R.**

Date of hearing : 30-11-2018
Date of pronouncement : 15-01-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by revenue for A.Y. 2012-13 to 2013-14, arise from order of the CIT(A)-4, Vadodara dated 25-08-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. As the fact in both the appeals filed by revenue are similar, so, we take ground nos. 1 & 3 of ITA No. 226/Ahd/2017 as the lead case and its finding will also be applicable to ground nos. 1 & 2 of ITA No 227/Ahd/2017 for the sake of convenience.
3. The revenue has raised following grounds of appeal:-

ITA No. 226/Ahd/2017

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in law and on facts by partly allowing the appeal of the assessee on the issue of disallowance

of Rs.6,16,897/- out of total disallowance of Rs. 12,33,795/- against the claim of sales promotion expenses of Rs.25,92,862/- by the assessee."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in law and on facts by allowing the appeal of the assessee on the issue of disallowance of non business expenses of Rs.2,75,750/- on account of legal & professional fees ."

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in law and on facts by partly allowing the appeal of the assessee on the issue of disallowance of Rs.1,04,77,266/- U/S.14A r.w.r 8D of the Act, without appreciating the fact that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure."

4. The brief fact of the case is that return of income declaring total income at Rs. 16,51,99,000/- was filed on 29th Sep, 2012. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(3) of the act on 6th August, 2013. The assessing officer has completed assessment u/s. 143(3) of the act by assessing the total income at Rs. 17,90,77,640/-. The assessee has filed three grounds of appeal in respect of addition made by the assessee which are adjudicated as under.

(i) Disallowance out of sale promotion expenses

5. The assessing officer has noticed that assessee has debited sale promotion expenses of Rs. 25,92,862/- in the P & L account. From the details submitted by the assessee, the assessing officer observed that out of aforesaid expenses an amount of Rs.12,33,795 were incurred for giving different kinds of gifts by the assessee. The assessing officer has disallowed the whole expenses of Rs. 12,33,795/- on the ground that assessee has failed to substantiate its claim with supporting evidences that these expenses were incurred for the business.

6. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee by restricting the disallowance to the 50% of these expenses to the amount of Rs. 6,16,896/-.

7. We have heard rival contentions and perused the material on record. It is noticed that assessee claimed expenses of Rs.25,92,862/- towards sale promotion expenses out of which it had incurred Rs. 12,33,795/- towards various gifts and presentations made to clients. The Id. CIT(A) has restricted

the disallowance to the 50% of such expenses considering the turnover and income of the assessee shown during the year under consideration. After considering income of Rs. 16,51,99,000/- declared by the assessee and the nature of business of the assessee we are inclined with the decision of Id. CIT(A) of restricting of disallowance of sales promotions expenses incurred in the form of gif to the 50% of such expenses . Therefore, this ground of revenue is dismissed.

Disallowance of legal and professional expenses of Rs. 2,75,750/-

8. During assessment on verification of ledger account, the assessing officer noticed that assessee has paid an amount of Rs. 2,75,750/- to Deloitte Haskins and sells, CA for advising on tax implication related to gift of land to subsidiary company. The assessing officer has disallowed these expenses on the ground that same were not incurred for the purpose of business. Ld. CIT(A) has allowed the claim of the assessee. After hearing the rival contentions and perusal of material on record, we are inclined with the finding of Id. CIT(A) that these expenses have been incurred by the assessee for the purpose of streamlining its financial structuring, therefore, we do find any doubt on the genuineness of these expenses, therefore, on this issue, appeal of the revenue is dismissed.

Disallowance u/s. 14A r.w. Rule 8D

9. During the course of assessment, the assessing officer observed that section 14A of the income tax act, 1961 provides for disallowance of expenditure in relation to income not includible in total income. The assessing officer was of the view that Rule 8D r.w.s. 14A of the act provides for disallowance of the expenditure even where the assessee in particular year had not earned any exempt income. Therefore, the assessing officer has computed disallowance as

per section 14A r.w. rule 8D to the amount of Rs. 1,06,77,266/- and added to the total income of the assessee.

10. The assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has restricted the addition to the amount of Rs. 2 lac on the ground that assessee has not shown sufficient interest free fund available with it as per the balance sheet ending on 31st March, 2012. The net reserves of the assessee company was of Rs. 139,21,54,435/- whereas the value of investment was only Rs. 40,24,00,000/-. The Id. CIT(A) has also placed on the reliance on the decision of Hon^{ble} Gujarat High Court in the case of CIT vs Gujarat Industrial Corporation (2013) 318 taxman 142 (Guj) , CIT vs. Torrent Power Ltd. (2014) 222 taxman 367 (Guj) and the decision of CIT vs. Hittachi Home and Life Solutions (P) Ltd. (2014) 41 taxman 540 (Guj).

11. We have heard the rival contentions and perused the material on record .It is noticed that assessee has not earned any exempt income during the year under consideration and the Hon^{ble} Gujarat High Court in the case of CIT vs. Corrtch Pvt. Ltd. (2014) 45 taxman.com 16 held that where assessee has not shown any exempt income there cannot be any expenses to be disallowed. In the light of the above facts and judicial findings, we do not find any merit in the ground of appeal, therefore, the same is dismissed.

12. In the result, appeal ITA 226/Ahd/2017 filed by revenue is dismissed.

13. In the combined result, appeal ITAs 226 & 227/Ahd/2017 filed by revenue are dismissed.

Order pronounced in the open court on 15-01-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 15/01/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / 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 अपीलालय आधिकरण,
अहमदाबाद