

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सु-रत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.2922/Ahd/2015/SRT	निर्धारण वर्ष/A.Y.:2011-12
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M/s. Hi choice Processors Pvt. Ltd. , 264 GIDC, Sachin Surat PAN: AAACH 7062E	Vs.	Deputy Commissioner of Income-Tax, Central Circle1, Surat
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Revenue by	Shri O. P. Meena. Sr. D.R.

सुनवाई की तारीख/ Date of hearing:	30.05.2018
उद्घोषणा की तारीख/Pronouncement on	05.06.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-1, Surat (in short “the CIT (A)”) dated 21.09.2015 pertaining to Assessment Year 2011-12, which in turn has arisen from the assessment order dated 31.03.2014 passed by the Deputy Commissioner of Income-Tax, Central Circle-1, Surat (in short “the AO”) under section 143 (3) of Income Tax Act,1961 (in short ‘the Act’).

2. Ground No.1: States that Id. CIT (A) erred in confirming the action of the AO in making disallowance of Rs. 2,62,503 under section 14A Read with Rule 8D of Income Tax Rules, 1962.

3. Facts apropos of this ground are that the assessee has shown dividend income of Rs.7,500 which was claimed exempt from tax. The assessee has claimed that the investment in shares of Rs. 42,500 made before 10 years hence, no disallowance u/s. 14A is required. Further investment in shares has been made from its own fund. However, the AO was of the view that rigors of section 14A are so intense that its provisions apply even where the assessee claims that no expenditure has been incurred for earning dividend exempt income. Therefore, the AO has computed and made the disallowance at Rs.2,62,503 under section 14A of the Act read with Rule 8D of Income-Tax Rules, 1962.

4. Being, aggrieved the assessee filed an appeal before the Id. CIT (A). However, the CIT (A) noted that the assessee has also made several other investment which are capable to yield exempt income. The assessee has incurred interest expenditure of Rs. 49,07,846 including bank interest and interest on unsecured loans. The CIT (A) has relied in the case of Cheminvest Ltd. v. ITO [2009] 121 ITD 318 (Del) (SB) / [2009] 317 ITR 86 (Del)(SB) wherein it was observed that when expenditure of interest is incurred in relation to income which does not form part of total income, disallowance of u/s. 14A is to be made even if no exempt

income is earned or not. The CIT (A) also supported his view by pricing reliance M/s. Citicorp Finance (India) Ltd. [2007] 12 SOT 248 (Mum/ [2007] 108 ITD 471 (Mum) and upheld the disallowance so made by the AO.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee contended that the AO has relied on the decision in the case of Cheminvest Ltd. v. ITO 121ITD 318(Del) (SB)/[2009] 317 ITR 86 (SB)(DEL) which stands overruled. It has been further submitted that it has been held in myriads of cases disallowance under section 14A read with Rule 8D cannot exceed exempt dividend income. Hence, in this case, as the exempt income is only Rs. 7,500, the addition under Rule 8D should be restricted to Rs. 7,500 in any case. Reliance was placed in the case of *CIT v. Corrttech Energy Pvt. Ltd.* [2015] 372 ITR 97 (Guj): [2014] 45 taxmann.com 116: 223 *Taxman 130 (Guj.) wherein in was held that where assessee has not sought any income exemption, there cannot be any expenses there against which is to be disallowed. This ratio can be applied to restrict the disallowance to the extent exempt income.* The learned counsel for the assessee further reliance in the case of Pr. CIT -1 Chandigarh vs. Empire Package (P.) Ltd. [2017] 81 taxmann.com 108 (P&H) [I. T. A. No. 415 of 2015 , dtd. 12.01.2016] which has been laid

down that disallowance under section 14A read with Rule 8D should not exceed exempt income.

6. On the other hand, the Learned Departmental Representative relied on the orders of lower authorities.

7. We have heard the rival submissions and have gone through the orders of the lower authorities, and perused the material available on record. It is noticed that the assessee has earned dividend income of Rs.7,500 whereas the AO made disallowance at Rs. 2,62,503 under section 14A read with Rule 8D. Thus, where disallowance of expenditure incurred is more than exempt income, it gives distorted results and cannot be seem to be logical. The learned counsel for the assessee placed reliance CIT v. Corrttech Energy Pvt. Ltd. [2015] 372 ITR 97 (Guj): [2014] 45 taxmann.com 116 ; 223 Taxman 130 (Guj.) wherein it was held that where assessee has not sought any income exemption, there cannot be any expenses there against which is to be disallowed. This ratio can be applied to restrict the disallowance to the extent exempt income. In view of this matter, we direct the AO to restrict the disallowance to Rs. 7,500 being dividend income as against the disallowance of Rs. 2,62,503 made by him. Accordingly, this ground of appeal is partly allowed.

8. Ground No. 2 relates to the confirming disallowance excess interest of Rs. 30,325.

9. Facts apropos of this ground are that the assessee has paid interest @15% on unsecured loans obtained by it. Whereas it has charged interest @ 12% on loan of Rs.10,10, 861 given M/s. Amar Projects Pvt. Ltd., a sister concern of the assessee. Therefore, the AO has restricted the payment of interest to 12% and consequently, disallowed excess interest of Rs. 30,325 being 3% on total loan amount of Rs.10,10,861. The CIT (A) has also echoed the same.

10. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted the assessee has sufficient interest free advances out of which loan to sister concern was advanced @12% interest. Hence, placing reliance on the decision in the case of CIT vs. Reliance Utilities & Power Ltd. (2009)313 ITR 340 (Bom) / 178 Taxman 135 (Bom) wherein it was held *If there are funds available both, interest-free and overdraft and/or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments.* The learned counsel for the assessee also placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT v. Raghuvir Synthetics Ltd. [Tax Appeal No. 829 of 2007 dtd. 05.12.2011] wherein it was held that where

the assessee has sufficient interest-free funds and advocate is given on commercial expediency then no disallowance of interest could be made.

11. The Id. DR relied on orders of lower authorities.

12. We have heard the rival submissions and perused the relevant material on record. We are of the view that the issue is covered in favour of the assessee as the assessee has sufficient interest-free funds fund of Rs. 60.59 Lakh as share capital, Rs. 2.20 crores as reserves and surplus and own interest-free funds of Rs.2.85 crores. Therefore, no disallowance on account of loan of Rs. 10.10 Lakh given to M/s. Amar Projects Pvt. Ltd. could be made in the light of ratio laid down by the Hon`ble jurisdictional High Court of Gujarat in the case of Raghuvir Synthetic Pvt. Ltd. (supra) and CIT vs. Reliance Utilities & Power Ltd. (2009)313 ITR 340 (Bom)/ 178 Taxman 135 (Bom). This ground is therefore, allowed.

13. In the result, the appeal of the assessee is partly allowed.

14. The order pronounced in the open Court on 05-06-2018.

Sd/-

(सी.एम.गर्ग) / (C.M. GARG)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ ACCOUNTANT MEMBER

सुरत/ Surat: दिनांक /Dated : 5th Jun, 2018/opm

Copy sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(ओ.पी.मीना) / (O.P.MEENA)

By order

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Assistant Registrar, Surat