

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
[ Before Shri Pramod Kumar, Vice President ]**

ITA No. 276/Ahd/2017  
Assessment Year : 2013-14

**Ardor In-Fin Private Limited** .....Appellant  
*Ardor House, Mondeal Business Park,  
B/s. Gurudwara, Thaltej,  
Ahmedabad – 380 059  
[PAN – AAGCA 2925 B]*

**Vs.**

**Dy. Commissioner of Income-tax** .....Respondent  
*Circle 1(1)(1), Ahmedabad*

**Appearances by:**

**Ankit Talsania** *for the appellant*  
**Apoorva Bhardwaj** *for the respondent*

Date of concluding the hearing : 13.02.2019

Date of pronouncing the order : 14.03.2019

**O R D E R**

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 28<sup>th</sup> November 2016 in the matter of assessment under section 143(3) of the Income-tax Act, 1961 for the assessment year 2013-14.

2. Grievances raised by the appellant are as follows:-

*“1. The Ld. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in confirming the action of the Ld. Assessing Officer in applying provisions of S. 14A of the Act without appreciating and ignoring the facts that the Appellant had neither earned nor claimed any exempt income, and therefore, provisions of S. 14A of the Act was not applicable in the present case.*

*2. Both the Ld. Authorities have further failed to appreciate that when the provisions of S. 14A of the Act are not applicable in the present case, the disallowance of Rs.1,26,80,077/- made u/s 14A of the Act, by the Appellant while filing Return of Income, ought to have been reduced while computing the total income by the Ld. AO in the assessment proceedings.*

*3. Alternatively and without prejudice to above raised grounds, both the lower authorities have failed to appreciate that in any case provisions of S. 14A of the Act are not applicable in the present case, and therefore, no disallowance on account of S. 14A read with Rule 8D could have been made while computing total income of the Appellant.*

*4. The Ld. CIT(A) has erred in law and on facts, in confirming the action of Ld. AO in making disallowance of Rs.1,39,01,970/- u/s 14A r.w.r. 8D while computing book profit under section 115JB.*

*5. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.”*

3. To adjudicate on this appeal, only a few material facts need to be taken note of. There is no dispute that there is no exempt income claimed by the assessee in the present year and yet disallowance under section 14A has been sustained by the CIT(A) to the extent the assessee has offered the disallowance on his own. As to whether disallowance under section 14A can be lawfully sustained in such a situation, I find guidance from Hon'ble jurisdictional High Court's judgment in the case of CIT vs. Corrttech Energy Pvt Ltd [(2015) 372 ITR 97 (Guj.)] as follows:-

*“.....sub-section(1) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed as under :*

*"7. We do not find any merit in this submission. The judgement of this court in Abhishek Industries Ltd (2006) 286 ITR 1 was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application."*

*5. We do not find any question of law arising, Tax Appeal is therefore dismissed.”*

4. I may also add that the assessee, on his own, had offered the disallowance under section 14A and, as he did so, he was oblivious of the judicial developments as above. The CIT(A) deleted the disallowance by the CIT(A) but left the disallowance offered by the assessee on his own intact. Having realised his mistake, the assessee did make the claim before the CIT(A) and sought to withdraw the *suo motu* disallowance offered by him mistakenly but the CIT(A) declined to grant any relief in the matter, as, in his opinion, Hon'ble Supreme Court's judgment in the case of Goetze India Ltd Vs CIT (284 ITR 223), came in the way. No claim could be made by the assessee except by way of revising the income tax return. That bar admittedly applies only on the authorities below and this Tribunal, in the light of Hon'ble Supreme Court's judgment in the case of NTPC Vs CIT (229 ITR 383), is empowered to deal with any question of law particularly arising out of undisputed

facts on record. On merits, the claim of the assessee is legally correct inasmuch as when there is no exempt income, there cannot be any question of disallowance of expenses- even if mistakenly offered by the assessee on his own. The assessee thus indeed deserves to succeed. In this view of the matter, even the suo motu disallowance offered by the assessee, is hereby deleted. To that extent, assessee must now succeed as well.

5. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 14<sup>th</sup> March, 2019.

Sd/-

**Pramod Kumar  
(Vice President)**

**Ahmedabad, the 14<sup>th</sup> day of March, 2019**

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Copies to: (1) The appellant  
(2) The respondent  
(3) Commissioner  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

TRUE COPY

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad