

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘C’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2628/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2014-15

Angi Investments P.Ltd. 10 & 11, 4 th Floor, Archan 9, Alkapuri Society Usmanpura Ahmedabad 380014. PAN : AABCA 5996 M	Vs	ITO, Ward-1(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Parin Shah, AR
Revenue by :	Shri T.C. Meena, Sr.DR

सुनवाई की तारीख/Date of Hearing : 27/03/2019

घोषणा की तारीख /Date of Pronouncement : 08/ 04/2019

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-1, Ahmedabad dated 21.9.2017 passed for the Asstt.Year 2014-15.

2. Assessee has taken three grounds of appeal. In ground no.2, it has pleaded that the Id.CIT(A) has erred in confirming inclusion of disallowance made under section 14A in the book profit determined under section 115JB of the Income Tax Act, 1961. The Id.counsel for the assessee at the very outset submitted that this issue is covered in favour of the assessee by the decision of Special Bench in the case of ACIT Vs.

Vireet Investments P.Ltd., 165 ITD 27 (SB) wherein it is held that no increase or decrease can be effected in the book profit calculated under section 115JB on account of certain disallowance made under section 14A.

3. Considering the above facts, we are of the view that Special Bench of the ITAT in the case of Vireet Investment P.Ltd. (supra) has formulated following question for adjudication on this issue:

“Whether the expenditure incurred to earn exempt income computed u/s.14A could not be added while computing book profit u/s.115JB of the Act.”

4. Special Bench answered this question in favour of the assessee and held that computation for the purpose of clause (f) of *Explanation 1* to Section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A r.w. rule 8D. Respectfully following the above decision of the Special Bench, we allow this ground of appeal and direct the AO not to make adjustments in book profit for the purpose of MAT liability on the basis of calculations made with Rule 8D of the Income Tax Rules.

5. In ground no.3, the grievance of the assessee is that the Id.CIT(A) has erred in charging of interest under section 234A/B/C of the Act. The Id.counsel for the assessee did not advance arguments on this issue, and agreed that it is consequential in nature. Hence, this ground is rejected.

6. In ground no.1, the assessee has pleaded that the Id.CIT(A) has erred in confirming the disallowance of Rs.1,51,005/- made by the AO under section 14A of the Income Tax Act, 1961.

7. Brief facts of the case are that the assessee company at the time relevant time was engaged in the business of investment. It has filed return of income on 13.9.2014 declaring total income at Rs.8,59,368/-. On scrutiny of the accounts it revealed to the AO that the assessee has earned dividend income of Rs.2,00,204/- which was claimed as exempt under section 10(34) of the Income Tax Act. The Id.AO proceeded to examine the expenses relating to earning this income which was required to be disallowed under section 14A r.w. rule 8D of the Income Tax Rules. He ultimately worked out such disallowance at Rs.1,51,005/- which included direct expenditure of Rs.954/-, administrative expenditure of Rs.6,790/- and interest expenditure of rs.1,43,261/-.

8. The Id.counsel for the assessee at the very outset contended that as far as interest expenditure worked out by the AO for disallowance is concerned, which ought to have not been disallowed. He took us through page no.14 of the paper book, where financial statement ending on 31.3.2014 is available. It reveal from these details that the assessee has interest income at Rs.26,20,621/- whereas it has shown interest expenditure of Rs.17,34,237/-. Thus, the assessee has net interest income. Similarly, the assessee has more interest free funds than the investment. Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Nirma Credit & Capital P.Ltd., (2017) reported in 85 taxmann.com 72 (Guj) = 300 CTR 286 (Guj) held that if there is net interest income then

the interest expenditure cannot be disallowed. The relevant observation of Hon'ble Court reads as under:

"14. While answering the question in favour of the assessee, we hold that for the purpose of applying the factors contained in clause (ii) of sub-rule (2) of Rule 8D, prior to its amendment with effect from 2.6.2016, what would be considered as amount of expenditure by way of interest would be the interest paid by the assessee on the borrowings minus the taxable interest earned during the financial year."

9. On due consideration of the above facts and circumstances, we find that the assessee has more interest free funds than the investment made by it which has resulted tax free income. Apart from above, we further find that the assessee has net interest income. Therefore, in view of the judgment of Hon'ble Gujarat High Court in the case of Nirma Credit & Capital P.Ltd. (supra) no disallowance on account of interest expenditure is to be made in the present case. We allow this ground partly and confirm the disallowance to the extent of Rs.6,790/- representing administrative expenses and Rs.954/- which is relatable to direct expenditure. Interest expenditure of Rs.1,43,261/- disallowed by the AO is deleted.

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

Pronounced in the Open Court on 8th April, 2019.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

Ahmedabad; Dated, 08/04/2019