

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. 137/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2008-2009

Atul Limited Atul House, GI Patel Marg Mithila Society Ahmedabad 390014. PAN : AABCA 2390 M	Vs	DCIT, Cir.1(1)(2) Ahmedabad.
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आयकर अपील सं./ ITA No. 286/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2008-2009

DCIT, Cir.1(1)(2) Ahmedabad.	Vs	Atul Limited Atul House, GI Patel Marg Mithila Society Ahmedabad 390014. PAN : AABCA 2390 M
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri S.N. Soparkar, Sr.AR with Shri Parin Shah, AR
Revenue by :	Shri G.C.Daxini, 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 and Revenue are in cross appeals against order of the Id.CIT(A)-1, Ahmedabad dated 29.11.2016 passed for the Asstt.Year 2008-09.

2. In the first ground of appeal, Revenue has pleaded that the Id.CIT(A) has erred in deleting the addition of Rs.71,35,647/- which was added by the AO by making disallowance out of claim of prior period expenses.

3. Brief facts of the case are that the assessee has filed its return of income 26.9.2008 declaring total income at NIL. Assessment order was passed under section 143(3) on 20.12.2011 determining total income at Rs.25,88,72,888/-. The AO has made various disallowance. The dispute travelled upto the Tribunal in ITA No.8/Ahd/2013 and ITA No.385/Ahd/2013. The Tribunal has remitted the issue with regard to the claim of prior period expenses and this remittance was made on the strength of finding recorded by the Tribunal in the Asstt.Year 2006-07. The facts in this regard are that the assessee has claimed a sum of Rs.1,18,06,240/- as prior period expenses, and after netting of that prior period income of Rs.2,52,37,240/-, the assessee has offered net prior period income at Rs.71,35,647/-. The Id.AO denied the benefit of netting and disallowed Rs.1,81,06,240/-. Thus, dispute was remitted back to the AO for examining the exact nature of liability, its crystallization and nature of period of income. In the set aside assessment order, the Id.AO found that the assessee has shown prior period income of Rs.1,09,70,593/-. He has allowed relief to this extent against prior period expenses and restricted the disallowance to Rs.71,35,647/-. Dissatisfied with this disallowance, assessee carried the matter in appeal before the Id.CIT(A). The Id.First Appellate Authority has deleted this disallowance by recording the following finding:

*“3.5. I have considered the facts of the case and submissions placed by the appellant. Appellant for the year under consideration has claimed expenses amounting to Rs.1,81,06,240/- pertaining to previous years. The appellant has further offered income of Rs.2,52,37,240/- pertaining to previous years. There are three broad issues involved in the said dispute; first being crystallization of liabilities of "prior period expenses" in the year under consideration. The second issue is with regards to giving netting off benefit of prior period income against prior period expenses. Third issue is with regards to revenue implication to the dispute.*

*The first issue is with regard to crystallization of liabilities on account of prior period expenses in the year under consideration. The Hon'ble Tribunal vide para 11 (Page No. 12 of the order) directed the assessee to substantiate the crystallization of liabilities in the year under consideration and further directed AO to examine the exact nature of liabilities with regards to prior period expenses. AO disallowed the claim after holding that the appellant was not able to substantiate the claim. The appellant before me has argued that the expenses related to previous year were constantly debited by the appellant to prior period expenses account and in many cases the bills were received by the company after the close of accounting year and therefore, the liability was finalized and crystallized during the F. Y. 2007-08. The second issue is with regards to allowing netting off benefit of the prior period income amounting to Rs.71,74,782/- as against prior period expense. The Hon'ble Tribunal directed the appellant to demonstrate the nature of prior period income. The appellant during the assessment proceedings has demonstrated nature of prior period income only to the tune of Rs. 1,09,70,593/- and accordingly the AO has provided benefit only to that extent.*

*The third limb of argument is with regards to the revenue implications of the dispute. The appellant has relied upon the decision of Gujarat High Court in the case of Pr. CIT v/s. Adani Enterprise wherein it was held that when the assessee offers its prior period income to tax and it was charged at the uniform rates in both the years i.e. year in which the expenses pertained to as claimed by the revenue and the assessee, no disallowance can be made on account of prior period expenses. In present case, the appellant is body corporate being taxed consistently at a uniform rate, has offered both its prior period income ^expenditure under the head prior period adjustments in P & L Account. I find that as a body corporate having huge turnover, it is natural and unavoidable that some*

*expenditure though incurred in earlier period, are recorded and paid in a later period. However, if this practice is followed consistently, it has no revenue impact over a period of time due to some expenditure being carried over from year to year. In fact this commercial aspect has been recognized and approved by the Hon'ble Jurisdictional High Court in the case of Adani (supra) by holding that under such circumstances, no disallowance of prior period expenditure which is otherwise of revenue in nature, is called for. In the present case, since all prior period expenditure are revenue in nature, respectfully following the judgment of Hon'ble Gujarat High Court, the disallowance of prior period expenditure is directed to be deleted. Thus, Ground No. 1 & 2 are allowed."*

4. The ld.counsel for the assessee at the very outset submitted that the issue in dispute is squarely covered by the decision of Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Adani Enterprises Ltd. Tax Appeal No.566 of 2016. Copy of this judgment has been placed on page no.55 of the paper book. He further contended that order of the ITAT in the case of Adani Enterprises Ltd., this issue has also been considered. A copy of which is placed at page no.61 of the paper book. The Tribunal has adjudicated this issue in the ITA No.1859/Ahd/2011 and others. This order of the Tribunal on the issue, whether prior period expenses can be allowed to the assessee, has been upheld by the Hon'ble Gujarat High Court in Tax Appeal No.566/2016 (supra).

5. With the assistance of the ld.representatives, we have gone through the record carefully. We find that the ld.CIT(A) has rightly formulated three propositions in the impugned order. The ld.CIT(A) has rightly observed that prior period expenses claimed by the assessee are of revenue in nature, and they have been crystallized during the accounting period relevant to this assessment year. Considering this aspect, the ld.CIT(A) has rightly deleted the disallowance. A reference

to the decision of Hon'ble jurisdictional High Court in the case of Adani Enterprises has also been made for the proposition that once an income pertaining to prior period is being recognized in the current year, and offered for taxation, then equal treatment be given to prior period expenditure which are revenue in nature and crystallized in this year. Considering well reasoned finding of the Id.CIT(A) we do not see any force in this ground of appeal. It is rejected.

6. Ground No.2 in the Revenue's appeal and ground nos.1 and 2 in the assessee's appeal are being taken up together for adjudication. The sole issue involved is, what amount is required to be worked out for making disallowance under section 14A r.w. Rule 8D of the Income Tax Rules.

7. Brief facts of the case are that the assessee has shown dividend income of Rs.4.29 crores which is claimed as exempt. In the original assessment order, the Id.AO has made a disallowance of Rs.3,25,92,000/- . The issue travelled upto the Tribunal, and thereafter it was remitted back to the AO. In the fresh assessment order, the Id.AO has worked out the disallowance at Rs.36,35,685/-. The dispute went before the Id.CIT(A), and the Id.CIT(A) has deleted the disallowance partly, which is being impugned in the Revenue's appeal. The disallowance retained by the Id.CIT(A) is being impugned by the assessee in its appeal under ground no.1 and 2. The finding recorded by the Id.CIT(A) on this issue reads as under:

*"4.4. I have considered the facts of the case, submissions placed by the appellant and judicial precedents relied upon by the appellant. The appellant for the year under consideration has earned Rs.4.29 crores as*

*dividend and AO during the original assessment proceedings disallowed Rs.3,25,92,000 /- u/s 14A of the Act after following Rule 8D of The Income Tax Rules,1962. The Hon'ble Tribunal after following the decision of Godrej Boyce Mfg Co. Ltd, Mumbai v/s DC/T reported in 321 ITR 81 (Bom) where in it was held that the method prescribed in Rule 8D was applicable prospectively i.e. from A. Y 2008-09 and thus it has to be applied from the year under consideration. AO was accordingly directed to rework such disallowance by applying Rule 8D. The appellant during the course of set aside proceedings submitted that it had substantial interest free funds and worked out administrative expenses relatable to earning of exempt income at Rs.3,00,000/-. However, AO reworked the disallowance by applying the method prescribed under Rule 8D of The Income Tax Rules, 1962 at Rs.36,35,685/-*

*4.5 There are broadly three issues involved in the dispute first being the applicability of Rule 80 mechanically, second, being the quantum of disallowance and third being 14A adjustment to the book profit calculated u/s 115JB of the Act. With regards to the first issue, in my opinion the AO has correctly applied Rule 8D of The Income Tax Rules, 1962 as the appellant has not disallowed anything u/s 14A. From the perusal of the balance sheet it can be seen that appellant had interest free funds of Rs.433.12 crores as against investments of Rs.9.14 crores. As held by the series of decisions of jurisdictional High Court in the cases of Suzlon (supra) and Torrent (supra) and other, I am inclined to agree with the arguments of the appellant that it possessed sufficient interest free funds to support such investments and thus interest disallowance of Rs.31,65,175/- stands deleted. As far as disallowance of administrative expense is concerned, the AO has applied method as prescribed under Rule 8D which has been considered as appropriate as discussed above. Accordingly, disallowance of Rs.4,70,510/- as worked out by the AO is sustained. Thus Ground No. 3 & 4 are partly allowed.*

8. With the assistance of the ld.representatives, we have gone through the record carefully. A perusal of the CIT(A)'s order would indicate that there are three components forming part of total disallowance worked out at Rs.36,35,685/-. The first component is interest expenditure amounting to Rs.31,65,175/-. The ld.CIT(A) has deleted this component on the ground that the assessee was having

more interest free funds than the investment. There is no dispute with regard to the fact that the assessee has earned Rs.4.29 crores as dividend income. The assessee has made investment of Rs.9.14 crores. It has interest free funds of Rs.433.13 crores. The Id.CIT(A) by putting reliance upon the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Suzlon Energy Ltd., 354 ITR 630 and CIT Vs. Torrent Power Ltd., 363 ITR 474 (Guj) has held that when the assessee has more interest free funds, then it is to be construed that investment was made out of interest free funds and no disallowance is to be made on account of interest expenditure.

9. Other two components are administrative expenses. The Id.AO has worked out administrative expenses under Rule 8D at Rs.4,70,510/-. According to the assessee it should be Rs.3,00,000/-. The Id.CIT(A) has rejected this contention of the assessee, and upheld the working made by the AO. Before us, the Id.counsel for the assessee submitted that the AO ought to have taken into consideration the average investment which has yielded exempt income in this year. In support of his contentions, he relied upon the decision of the Special Bench in the case of Special Bench in the case of ACIT Vs. Vireet Investments P.Ltd., 165 ITD 27 (SB).

10. On due consideration of the above facts, in principle we hold that administrative expenses are required to be calculated for disallowance under section 14A of the Act. However, the Id.AO shall take into consideration the average of investment, which has yielded tax free income during the year. This exercise be carried out after providing due opportunity of hearing to the assessee. In view of the above, ground

no.2 raised by the Revenue is rejected. The ground no.1 and 2 raised by the assessee are partly allowed.

12. In the next ground of appeal, the assessee has pleaded that the Id.CIT(A) has erred in upholding inclusion of Rs.4,70,510/- worked out for disallowance under section 14A in the book profit computed under section 115JB of the Act. In this behalf, the Id.counsel for the assessee relied upon 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.

13. 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.”*

14. 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

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purpose of MAT liability on the basis of calculations made with Rule 8D of the Income Tax Rules.

15. In the result, appeal of the Revenue is dismissed, whereas the appeal of the assessee is partly allowed.

**Pronounced in the Open Court on 8<sup>th</sup> April, 2019.**

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

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

Ahmedabad; Dated, 08/04/2019