

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH "B" BENCH, AHMEDABAD

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER And  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos.1227 & 1147/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2012-13)

DCIT Cir- 1(1)(1), Vadodara 1 <sup>st</sup> Floor, Aaykar Bhavan, Race Course Circle, Vadodara- 390007	बनाम/ Vs.	Aditya Medisales Limited 402, 4thFloor, R.K. Centre, Fatehgunj, Vadodara- 390002
Aditya Medisales Limited 402, 4thFloor, R.K. Centre, Fatehgunj, Vadodara- 390002		DCIT Cir- 1(1)(1), Vadodara 1 <sup>st</sup> Floor, Aaykar Bhavan, Race Course Circle, Vadodara- 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAB CA9 317 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Mudit Nagpal, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Bandish Soparkar, A.R.

सुनवाई की तारीख / Date of Hearing :25/04/2019  
घोषणा की तारीख/Date of Pronouncement :26/04/2019

आदेश / ORDER

**PER SHRI KUL BHARAT, JUDICIAL MEMBER :**

These two cross appeals by the Assessee in ITA No. 1227/Ahd/2017 and ITA No. 1147/Ahd/2017. These two cross appeals by the Revenue and assessee are directed against the order of Commissioner of Income Tax(Appeals)-1, Vadodara ('CIT(A)' for short) dated 01.02.2017 pertaining to the Assessment Year (AY) 2012-13.

2. First we take up the Revenue's appeal in ITA No. 1227/Ahd/2017.

The Revenue has raised following grounds of appeal:-

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the interest of Rs. 6,09,54,788/- by treating it as business expenditure ignoring the fact on record that the transaction between Aditya Medisales Ltd. & M/s. Sun Pharmaceutical Industries Ltd. is not a transaction between 2 unrelated parties as the controlling person in both the company is same i.e. Mr. Dilip Shanghvi as per the Audit report u/s. 44AB in form 3CD for A.Y. 2012-13 submitted by the assessee.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in partly allowing the appeal on disallowance u/s. 14A of the Income Tax Act, 1961, without appreciating the fact that the disallowance is rightly made as per provisions of Rule 8D by the AO.*

*3. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary."*

3. Briefly stated facts are that case of the assessee was for scrutiny assessment and the assessment u/s. 143(3) of the Income Tax Act, 1961, by order dated 13.03.2015.

4. At the outset, Ld. Counsel for the assessee submitted that both the issues raised in these appeals are squarely covered by the decision of the Tribunal in assessee's own case pertaining to the assessment order 2009-10 and 2010-11. Ld. Counsel for the assessee submitted that therefore the ground raised by the Revenue deserves to be dismissed.

5. Ld. DR did not controvert the fact that issues are covered against Revenue in ITA No. 2548/Ahd/2015 and also by the judgment of the Hon'ble Gujarat High Court in Tax Appeal No. 559 of 2009 in the case of CIT vs. Aditya Medisales Ltd. Therefore, respectfully following the same Ground No. 1 of the Revenue's appeal is rejected.

6. Ground No. 2 it is stated that this also covered by the decision of the Tribunal and ITA No. 2550/Ahd/2015 pertaining to the A.Y. 2011-12.

7. Ld. DR did not controvert this fact that this issue is also covered by the decision of the Tribunal in earlier year therefore taking a consistent view the ground raised by the Revenue is dismissed.

8. Ground No. 3 is general in nature. There is need no separate adjudication. Appeal of the Revenue is dismissed.

9. Now coming to the assessee's appeal in ITA No. 1147/Ahd/2017.

The assessee has raised following grounds of appeal:-

*"1. The order passed by the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the learned CIT-(A)'] is bad in law and on facts.*

**2. Re: Disallowance of discount claim Rs.24,41,703/-**

*2.1 In the facts and circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the action of the Assessing Officer in disallowing the discount given to the doctors on the ground that same was not incurred wholly and exclusively for the purpose of business.*

*2.2 The learned CIT(A) failed to appreciate that the discount offered was in the regular course of Appellant's business for promoting Appellant's business and that the expenses so incurred by the Appellant were wholly and exclusively for the purposes of its business.*

**3. Re: Disallowance u/s. 14A read with rule 8D of Rs. 5,96,533/-**

*3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Assessing Officer of disallowing administrative expenses attributable to earning the dividend income u/s. 14A by invoking Rule 8D without recording satisfaction with regard to correctness of claim of the Appellant and as to how the disallowance carried out by the Appellant amounting to Rs.50,000/- was not adequate.*

3.2 On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the exempt income earned by the Appellant is incidental to the main intention of acquiring the shares, which are the strategic investments of the Appellant.

3.3 Without prejudice to above, the learned CIT (A) grossly erred in not rectifying the errors in calculating amount of disallowance u/s 14A read with Rule 8D.

3.4 Without prejudice to above, the disallowance u/s. 14A read with Rule 8D ought to be substantially reduced.

**4. Re: Levy of interest u/s. 234D:**

4.1 On facts and circumstances of case, and in law, the learned CIT(A) grossly erred in not directing the Assessing Officer to correct the errors made in the computation of interest u/s. 234D.

5. The appellant craves leave to add to, alter, amend or delete any ground of appeal.”

10. Ground No. 1 is general in nature and there is no need to separate adjudication.

11. Ground No. 2 Ld. Counsel for the assessee submitted that this issue is covered by the decision of the Tribunal of ITA No. 2548/Ahd/2015.

12. Ld. DR did not controvert this fact that the issue under consideration has already been decided against the Revenue. We find that this issue has been decided in favour of the assessee by the Coordinate Bench in assessee's own case in ITA No. 2548/Ahd/2015. The Revenue has not got any contrary binding precedent by the Hon'ble Jurisdictional High Court. Therefore, the ground raised by the assessee is allowed.

13. Ground No. 3 is against invoking provision of Sec. 14A. Ld. Counsel for the assessee submitted that the issue raised in this ground is

squarely covered by the decision of the Tribunal in assessee's own case in ITA No. 2550/Ahd/2015.

14. Ld. DR could not controvert the fact that the issue under consideration has already been decided against the Revenue. The facts are identical there is no change into the facts and circumstances. Therefore, taking consistent view we direct the AO delete this addition. This ground of the assessee's appeal is allowed.

15. Ground No. 4 is against levy of interest. This being consequential we hold accordingly.

16. Ground No. 5 is general in nature. There is need no separate adjudication.

17. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed.

Order pronounced in Court on the date mentioned hereinabove at caption page

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

TRUE COPY

Ahmedabad; Dated 26/04/2019

TANMAY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A), Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad