IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. Nos. 3283 & 3282/Ahd/2016
(Assessment Years : 2013-14 & 2012-13)

Baroda Dist. Co-op Milk Producers Union Ltd., Makarpura, Baroda – 390 009.	Vs.	DCIT, Circle – 1(2), Baroda – 390 007.
[PAN No. AAAAB 4510 B]		
(**Appellant**)	..	(**Respondent**)

Appellant by : Shri Manish Shah, A.R.
Respondent by : Shri Santosh Karnani, Sr. D.R.

Date of Hearing 13.02.2019
Date of Pronouncement 30.04.2019

O R D E R

PER Ms. MADHUMITA ROY - JM:

Both the appeals filed by the assessee are against the common order dated 28.09.2016 passed by the Commissioner of Income Tax (Appeals)-5, Vadodara under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') arising out of the orders dated 10.02.2016 and 27.03.2015 passed by the DCIT, Circle -1(2), Baroda for the Assessment Years 2013-14 & 2012-13.

Since both the appeals relate to the same assessee, those are heard analogously and are being disposed of by a common order.

ITA No.3283/Ahd/2016 for A.Y. 2013-14:

2. The assessee has challenged the confirmation of disallowance of deduction of Rs.6,46,875/- in respect of sale of seeds claimed u/s 80P(2)(iv) of the Act.

3. The assessee engaged in the business of milk processing, production of milk products and cattle feed, filed its return of income for A.Y. 2013-14 on 27.09.2013 declaring total income at Rs.4,81,36,780/-. Upon scrutiny notice u/s 143(2) dated 04.09.2014 was served upon the assessee. It appears that the total turnover shown by the assessee was of Rs.685,45,67,034/-. The gross receipt under the head “other sources” was shown at Rs.7,90,09,413/-, net profit whereof was of Rs.3,98,33,142/-. After certain adjustments and claim of deduction u/s 80P of the Act at Rs.88,15,734/-, the total return was at Rs.4,81,36,780/-. During the course of assessment proceeding, the Learned AO observed that the assessee has declared profit of Rs.6,46,875/- on sale of seeds and the assessee claimed whole of the said amount as deduction u/s 80P(2)(iv) of the Act. The assessee had not debited indirect expenses from the same and therefore relying on the judgment of Gandevi Taluka Khedut Sahakari Sangh Ltd.-vs-CIT reported in 76 Taxman 36 Guj (1994) on the ratio that deduction u/s 80(P)(2)(a)(iv) was to be allowed on net profit and gain and not with respect to gross profit and gains. The Learned AO disallowed the whole of the claim of deduction of Rs.6,46,875/- u/s 80(P)(iv) of the Act. In appeal, assessee was given part relief whereby and whereunder the Learned Assessing Officer was directed to allocate indirect expenses at 40% of gross profit and to allow deduction u/s 80(P)(2)(iv) of the Act on the balance amount.

4. At the time of hearing of the instant appeal the Learned Advocate appearing for the assessee submitted before us that no separate infrastructure or expenditure is required to be incurred by the assessee for selling the seeds since this is a trading activity and the assessee is only acting as an agent. The seeds are procured from the seeds growing agencies and sold to the members of the society, the member are themselves lifting the seeds from the dairy premises. It was further argued that the Learned authorities below failed to appreciate the facts in its proper prospective and thus disallowed the sum of Rs.6,46,875/- only on the basis of assumption and estimate without their being any factual finding of the fact that the appellant has incurred any such expenditure. Factually, the seeds are supplied to societies from the centers where no additional expenditure except transportation allocation along with milk vehicles is incurred which cannot be even more than 5 to 10 % of its value. He, therefore, prays for deletion of the excessive unreasonable disallowance of Rs.6,46,875/- in respect of sale of seeds claimed u/s 80(P)(2)(iv) of the Act. On the contrary the Learned DR relied upon the order passed by the authorities below.

5. We have heard the respective parties, we have also perused the relevant materials available on record. It appear from the records that the assessee has not attributed any direct or indirect expenses to its cotton seeds sale activities. However, the Assessing Officer, estimated the indirect expenses attributable to such activity and disallowed the entire claim of deduction under Section 80(P)(2)(iv) in spite of furnishing trading account on the seed selling unit by the assessee. It further appears that the Assessing Officer estimated such expenses at 40% of the gross profit for A.Y. 2011-12 in assessee's own case

which was further upheld by the Learned CIT(A) and following the decision of the predecessor, the Learned CIT(A) directed the Assessing Officer to allocate indirect expenses at 40% of gross profit and to allow deduction u/s 80(P)(2)(iv) of the Act on the balance amount. It is a fact that additional expenditure except transportation allocation along with milk vehicles no expenditure seems to be incurred by the assessee as it appears from the records before us. If that be so then the allocation of indirect expenses at 40% of gross profit does not seem reasonable taking into consideration the entire aspect of the matter. We, therefore, restrict the said allocation of indirect expenses at 20% of the gross profit. The Learned AO is, therefore, directed to allow deduction u/s 80(P)(2)(iv) of the Act on the balance amount. Hence assessee's this ground of appeal is **partly allowed**.

6. The assessee further challenged the confirmation of disallowance of deduction of Rs.7,98,033/- u/s 14A of the Act r.w.r. 8D of the Income Tax Rules.

7. During the course of assessment proceeding, the Assessing Officer observed that the assessee had exempt income u/s 10(34) of the Act and the assessee has not made any disallowance u/s 14A of the Act. The assessee's submission to this effect was this that the investment had been made out on its own funds and the provision of Section 14A r.w.r. 8D were not applicable to the facts of its case. However, such contention made by the assessee was not found suitable and the Learned Assessing Officer held that the provision of Section 14A were applicable to the assessee's case and as a resultant effect

computed disallowance u/s 14A r.w.r. 8D at Rs.7,98,033/-. The same was confirmed by the first appellate authority. Hence the instant appeal before us.

8. At the time of hearing of the instant appeal the Learned Advocate appearing for the assessee submitted before us that the Learned AO wrongly invoked the provision of section 14A r.w.r. 8D of the Income Tax Rule. The appellant has having sufficient paid up share capital and reserves and surplus of Rs.26,23,59,906/-. Neither the Learned AO has found any investment made out the borrowed funds. It was further submitted that if there are funds available both interest free and over draft and/or loan taken, then a presumption would arise that, investment would be out of the interest free fund generated or available with the assessee. He, further relied upon the judgment passed by the Hon'ble Jurisdictional High Court in the case of CIT-vs-Banaskantha Dist. Co-Op Milk Producers Union Ltd. reported in [2014] 45 taxmann.com 152 (Gujarat) in support of his case where it has been held that Section 14A would not be applicable in relation to deductions to be made while computing total income under chapter IV. It was further contended by the Learned AR that there is clear absence of any reference of deduction to be made in computing the total income as per the provisions of Chapter-IVA in section 14A. As provided under chapter VIA while computing the total income of the assessee from his gross total income in accordance with and subject to the provision of this chapter the deduction specified are permissible. As a resultant effect the taxable income of the assessee would surely get reduced and yet there is marked difference between exempted income and the deduction provided under chapter IVA. Moreover, the investment in shares made by the assessee which earned him the dividend was from his own

income. The provision of Section 14A would have no application in respect of any income not been taxable on account of deduction u/s 80(P)(2)(d) of the Act as contended by the Learned AR and thus disallowance of deduction of Rs.7,98,033/- u/s 14A r.w.r. 8D of the Income Tax Rule is liable to be set aside. On the contrary, the Learned DR relied upon the order passed by the authorities below.

9. We have heard the Learned Counsel appearing for the parties, and perused the relevant materials available on record. It appears that during the course of appellate proceeding the assessee has submitted the following:

> *7.2 During the course of the appellate proceedings, the assessee submitted as under on the issue-*
>
> > *"3. On the facts of the case the learned A.O on law as well as on facts of the case in law in disallowing a deduction of Rs.7,98,033/- u/s 14A of the IT Act, 1961.*
> >
> > *The learned AO has wrongly invoked the provision of section 14A and Rule 8d of Income Tax Rules. Your appellant is having sufficient paid up share capital and reserves and surplus of Rs.26,23,59,906/-. The learned AO has not found any investment made out of loan/borrowed funds.*
> >
> > *Reliance is placed on the decisions of the B'Bay high court in income-tax appeal No. 1398 of 2008 in the case of C.I.T v/s. Reliance Utilities & power Ltd. holding presumption that "if there are funds available both interest free and over draft and/or loan taken, then a presumption would arise that, investments would be out of the interest free fund generated or available with the Assessee.*
> >
> > *There is no interest bearing fund which is invested such Assets.*
> >
> > *Without prejudice to the above ever presuming that Rule 8D applies interest Disallowance would be as follows i.e. on Net interest paid (excluding interest income) and not on gross amount of interest paid as worked out by AO.*

CALCULATION OF AMOUNT DISALLOWED U/S 14A AS PER RULE 8D AY 2013-14

1 Expenditure directly related to exempt Income	*0*
*2 Expenditure not directly attributable A*B/C*	*2783*
3 $^{1}/_{2}$ % of average value of investment	*677*
Amount Disallowed	*3460*
1 Expenditure directly attributable	*0*
*2 Expenditure not directly attributable (A*B/C)*	
B Average value of Investment	
C Average of total Assets	
A Amount of Interest paid	*35238585*

B Average Value of Investment from which exempt income is earned

	Fy 11-12	Fy 12-13
Total Investment	*135300*	*135300*
Average Investment	*135300*	

C Average total Assets

	Fy 11-12	Fy 12-13
Total Asset	*1609944853*	*1816716467*
Average Total Assets	*1713330660*	

*35238585*135300/17.13330660 = 2783*

3 1/2% of Average Investment 677

Further, Section 14A is applicable for the expenditure incurred to earned Exempt income and not to the income deductible under chapter Vi-A of the Act. The said has also been supported by the case laws CIT vs. Kribhco (2012) 349 ITR 618/75 DTR 265/209 Taxman 252/252 CTR 374(Delhi) (HC)

In the light of the above, your appellant therefore prays that in the interest of justice, the above disallowance of Rs. 798033/- u/s 14A of the IT Act, 1961, be deleted."

Ultimately, the Learned CIT(A) confirmed the order passed by the Learned AO with the following observation:

"7.3 I have carefully considered the facts and circumstances of the case, the observations of the Assessing Officer, the submissions of the assessee, material available on record and the judicial pronouncements on the subject. Assessee's assertion that all the investments are made out of its own funds is

not backed up by any evidence. Mere assertion is not enough. It has incurred interest expenditure of Rs. 3,52,38,585/- and has not established that it had not used interest bearing funds to invest in tax free investments. In any case, it has definitely incurred administrative cost in earning the exempt income. Assessee has further contended that even if the provisions of Section 14A read with Rule 8D are applicable, the disallowance under Rule 8D has to be computed with reference to net interest expenses (after adjusting interest income) and not gross interest expenses. In view of the decision of Hon'ble Ahmedabad ITAT in the case of ***Aditya Medisales Ltd. vs Addl.CIT [2016] 67 taxmann.com 270 (Ahmedabad-Trib.),*** *for the purpose of computing disallowance under section 14A, amount of net interest is to be taken into consideration and not gross interest. Consequently, the Assessing Officer is directed to recomputed disallowance u/s 14A of the Act with reference to net interest expenses of the assessee. The assessee partially succeeds on this ground of appeal."*

We have also carefully considered the judgment passed by the Jurisdictional High Court in the matter of Banaskantha Dist. Co-op Milk Producers' Union Ltd. which was followed the decision passed by the Hon'ble Delhi High Court in the matter of CIT-vs-Kribhco [2012] 349 ITR 618/209 Taxman 252/23 taxmann.com 312 where it has been held that section 14A would have no applicability in relation to deductions to be made while computing total income under Chapter IV. Chapter IV does not postulate or state that the incomes which qualify for the said deduction will be excluded and not form part of the total income. The relevant portion of the judgment as relied by the Learned Advocate appearing for the assessee passed by the Jurisdictional High Court in dealing with the issue as to whether provision of Section 14A r.w.r. 8D of the Income Tax Rule would be applicable in relation to deductions to be made while computing total income under chapter IV of the Act is as follows:

"7. Question to be addressed is as to whether section 14A would apply to provision of Chapter VIA. Provision of section 14A when examined, it operates in respect of the income not forming part of the total income. It could

be noted that provisions of Chapter VIA (sections 80A to 80U) refer to deductions to be made in computing the total income. Such deductions, in no manner, can be compared with the exempted income, which does not form part of the total income as provided in sections 10 to 13A under Chapter III of the Act. Section 14A was introduced retrospectively with effect from 1.4.1962 by Finance Act, 2001, for the purpose of computing the total income under Chapter IV. And, any expenditure incurred by the assessee in relation to exempted income, for the purpose of computing the total income, while applying section 14A, no deduction shall be allowed. However, there is a clear absence of any reference of deduction to be made in computing the total income as per provision of Chapter IVA in section 14A. Undoubtedly, as provided under Chapter VIA while computing the total income of the assessee from his gross total income in accordance with and subject to the provision of this chapter, the deductions specified are permissible. As a resultant effect, the taxable income of the assessee would surely get reduced and yet there is marked difference between the exempted income and the deduction provided under Chapter VIA. We notice that the investment in shares made by the assessee which earned him the dividend was from his own income. Moreover, from the very provision of section 14A, the same would have no application in respect of the income not being taxable on account of deduction under section 80P(2)(d). Both the authorities have rightly held that there is no application of section 14A as far as the deduction under sections 80A to 80U under Chapter VIA of the Act are concerned.

***8.** We notice that the Delhi High Court in the case of CIT v. Kribhco [2012] 349 ITR 618/209 Taxman 252/23 taxmann.com 312 decided identical question of law by elaborately discussing the law on the subject whereby it has held that section 14A would have no applicability in relation to deductions to be made while computing total income under Chapter IV. In the words of the Delhi High Court it was observed as under:—*

> *'31. While dealing with the detailed arguments raised by the Revenue, the Division Bench of this Court observed that broadly speaking the figure of total income is arrived at, as per the Act, in four stages. Firstly, the income of the resident assessee is computed by including all incomes, profits and gains arising in India or outside. Similarly income of resident but not ordinary resident or nonresident, are computed in accordance with Section 5 Chapter II, which forms the basis of Charge. Secondly, Chapter III with the heading "Incomes not included in the total income", comprises of Sections 10 to 13 and these incomes are not included in total income but some exemptions are only partial and not total. Thirdly, even in case of income, profit and gains included for arriving at the total income, the entire income is not liable to tax. Deductions as stipulated in*

Chapter IV can apply, e.g. Sections 34, 35A and 35B etc. Even in Chapter VI, deductions for set off or carry forward of loss is allowed. Fourthly and lastly, certain deductions were permissible under Chapter VII and Chapter VIII and which had been substantial or partly replaced and were placed under Chapter VI-A. These were deductions which were reduced from the income computed in accordance with the earlier provisions/Chapters of the Act. These deductions were made in the computation of total income and, therefore, definition of "gross total income", which was/is arrived at without reference to the deduction allowable under Chapter VI-A, was introduced. The deductions available under Chapter VI-A were either wholly or partly reduced from the "gross total income". The contention of the Revenue that once deduction stands allowed, the "income" in view of the deduction ceases to be a part of the total income, was rejected by the Division Bench of this Court in CIT v. Dalmia Cement (Bharat) Ltd. [1980] 126 ITR 736 (Delhi), for the following additional reasons:—

(1) The word "part" used in the Rule was to describe income fulfilling the description i.e. the category or class of the income. In other words it should indicate an identifiable section, category or class of income rather than mere portion or amount of such income. The question raised should be "whether this income was included" and not "whether any deduction was allowed". The use of the word "part" contemplates a type of income which by its very nature does not form part of the total income. The word "includible" supports that reference to the general nature and class of income rather than factual inclusion.

(2) It is not the actual quantification of the income which matters but whether or not income was excluded from the total income. It is the class of income rather than the amount which would determine whether or not the said class of income forms part of the total income. Incomes of the categories referred to in Chapter VI-A were to be taken into account as a part of total income and they do form part of the gross total income which was the first step in the process. Accordingly, even after the deduction allowable under Chapter VI-A, they form a part of the total income and do not get excluded merely because deduction is allowed.

(3) The Legislature had enacted sections 80C to 80U in Chapter VI-A, as a measure of relief from taxable liability. It incorporates and allows deductions. The income from these "sources" was included in the income, but subjected to deduction. Qualification

> *would vary from section to section. Further in some cases the deduction was full and in some cases it was partial but this was not material and it did not mean that if an amount was deducted it did not form part of the total income.*

32. Thus, the income on which the deduction is allowed forms a part of the total income, though not included in the amount or quantum on which tax is paid.

33. It can be urged (though it was not specifically argued by the Revenue) that in case of complete or entire deduction of the gross amount, Section 14A will be applicable, and Section 14A will not apply in case only the net amount (as stipulated in several Sections in Chapter VIA of the Act) is allowable as a deduction. There will be a fallacy in this argument. Even were partial or net amount is to be allowed as a deduction, the figure can be minus or in a loss. Logically, as a squiter, it will follow that in case the assessee has a negative/minus figure as per the computation made any of the provisions of Chapter VIA, the expenditure incurred cannot allowable under Section 37 of the Act, in view of Section 14A. The said position cannot be accepted. Income will include negative income or a loss. The corollary is that the entire income is included under the provisions of the Act by firstly including the entire receipts or incomes as stipulated in the charging section but after excluding the income stipulated in Chapter III. Thereafter, total income is computed under the Act by applying provisions of Chapter IV, V and VI. From this income, deductions are permitted and allowed in terms of Chapter VIA. Deductions do not mean that deduction allowed has the effect that the income, on which deduction is allowed, ceases to be part of the total income. This is not the scheme, effect and purport of the Act. The expression "income which does not form part of the total income" refers to the nature, character or type of income and not the quantum.

34. Section 14A states that for the purpose of computing total income under Chapter IV, no deduction shall be allowed in respect of expenditure incurred in relation to the income which does not form part of the total income under this Act. It does not state that income which is entitled to deduction under Chapter VIA has to be excluded for the purpose of the said Section. The words "do not form part of the total income under this Act" is significant and important. As noticed above, before allowing deduction under Chapter VIA we have to compute the income and include the same in the total income. In this manner, the income which qualifies for deductions under Sections 80C to 80U has to be first included in the total income of the assessee. It, therefore,

becomes part of the income, which is subjected to tax. Thereafter, deduction is to be allowed in accordance with and subject to the fulfillment of the conditions of the respective provisions. This is also subject to Section 80AB and 80A(1) and (2). Chapter VIA does not postulate or state that the incomes which qualify for the said deduction will be excluded and not form part of the total income. They form part of the total income but are allowed as a deduction and reduced.

35. It is clear from the aforesaid reasoning that the decisions in the case of Distributors (Baroda) Private Limited and Cambay Electric Supply Industrial Co. Ltd. (supra) have proceeded on the specific language of the said Sections, whereas in the other decisions Stumpp Schuele and Somappa Private Limited and South Indian Bank (supra) and those of the High Courts mentioned above have gone on the general principle relating to deductions allowed and whether a deduction once allowed has the effect that the income on which deduction ceases to be part of the total income. It has been uniformly and consistently held that in the absence of express language to the contrary, deduction if allowed does not mean that the said income ceases to be part of the total income.

36. In view of the aforesaid position, we answer the questions of law mentioned above in affirmative, i.e., against the appellant-Revenue and in favour of the respondent-assessee. In the facts of the present case, there will be no order as to costs."

Since section 14A is applicable for the expenditure incurred to earned exempt income and not to the income deductible under chapter VIA of the Act respectfully relying upon the said judgment, we find no justification in disallowing the claim of deduction of Rs.7,98,033/- u/s 14A of the Act r.w.r. 8D of the Rule in the case of the assessee before us. In that view of the matter such disallowance is deleted. Hence assessee's ground of appeal is **allowed.**

10. In the result assessee's appeal in ITA No.3283/Ahd/2016 for A.Y. 2013-14 is **partly allowed**.

ITA No.3282/Ahd/2016 for A.Y. 2012-13

11. The issue involved in this appeal has already been dealt with by us hereinabove in ITA No.3283/Ahd/2016 for A.Y. 2013-14 at para 5 and in the absence of any change of circumstances the same shall apply mutatis mutandis. Hence, this ground of appeal of assessee is **partly allowed**.

12. In the combined result, both the assessee's appeals are **partly allowed**.

This Order pronounced in Open Court on 30/04/2019

(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 30/04/2019
Priti Yadav, Sr.PS

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)- 5, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

सत्यापित प्रति //True Copy//

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