

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “B” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 2178/AHD/2017  
(Assessment Year: 2014-15)**

<b>Udayan Navinbhai Patel B-4, Nirmal Apartments, Opp. C P Chambers, Navrangpura, Ahmedabad-380009</b>	<b>V/S</b>	<b>The A.C.I.T, Circle-5(2), Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAYPP4350N**

**Appellant by : Shri Ashwin Shah & Bhadresh Gandhakwala  
Respondent by : Shri M. Anand Kumar, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 08 -05-2019

Date of Pronouncement : 13 -05-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-5, Ahmedabad dated 22.08.2017 pertaining to A.Y. 2014-15 and assessee has taken solely following ground:

*1. The learned CIT(A) has erred in confirming addition of alleged expenditure of Rs. 4,98,699 incurred in earning exempt income under Section 14A in as much as the assessee has not claimed any expenditure as deduction incurred in earning exempt income and therefore the question of disallowance does not arise.*

2. Facts of the case are that the learned AO has disallowed Rs. 4,98,699/- under Section 14A since the RF share from the partnership firm is exempt. In this connection, it may please be noted that the AO has worked out the average investment on the following investments:

PPF	Rs. 4,55,838
Shares	Rs. 50,08,379
Mutual Fund	Rs. 79,67,342
Capital Invested in Partnership firm	Rs. 6,06,03,335
Total	Rs. 7,40,34,894

3. From the above, it may please be seen that the total investment is Rs. 7,40,34,894 whereas the capital as on 31-03-2014 is Rs. 9.51.65,000 i.e. interest free funds. The copy of Balance Sheet and P & T Account as on 31-03-2014 enclosed. The entire investment is out of interest free funds and therefore the question of disallowance of interest under Section 14A does not arise since the assessee has not incurred any expenditure in earning exempt income, It may please be noted that the interest of Rs. 12,30,014 is claimed as deduction out of interest earned on the capital from the firm. Since the entire interest is claimed as deduction from interest from firm, the question of disallowance under Section 14A does not arise.
4. The learned AO has stated that the interest expenditure is incurred in claiming exempt income in the form of RF share [3<sup>rd</sup> Para on Page No. 3 of the

assessment order]. The learned AO has misappreciated the law. The learned AO has misappreciated the law. It is not necessary to introduce capital for the purpose of earning RF share. The partner is admitted as partner without any capital and yet gets RF share which is exempt. The interest received on capital from the firm is out of capital invested part of which is met out of borrowings and therefore the interest is claimed as deduction from interest. Further, it may please be noted that RF share is exempt since the firm has paid the tax on such profit at the maximum rate. Taxing the firm and not taxing the partner in respect of profit and taxing the interest and remuneration to the partner is a part of scheme of the Income Tax Act.

5. Further Section 40(b) grants deduction of interest to partners on fulfillment of certain conditions mentioned in Section 40(b). Further the interest so paid to the partners is taxable in the hands of partners and therefore it is said that it is appropriation of profit. The profit after remuneration is subject to tax and that the remuneration is also taxable in the hand of partners. And finally A.O. disallowed an amount of Rs. 4,98,699/- u/s 14A.
6. Thereafter assessee preferred first statutory appeal before the Id. CIT(A) who confirmed the action of the A.O.
7. We have gone through the relevant record and impugned order. Id. A.R sole grievance was that lower authorities have not considered papers filed by the assessee and particularly letter dated 19.08.2016 that is reply to notice u/s. 142(1) for assessment year 2014-15 wherein assessee allegedly given all the explanation with regard to above said addition and also submitted other document in support of its contention.

8. In the interest of justice, we set aside the matter to the file of the A.O. to decide this matter afresh after considering the documents to be placed before the Id. A.O. And thereafter will pass detailed and reasoned order as per provisions of law and after considering the documents to be filed by the assessee.
9. In the result, appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in Open Court on 13- 05- 2019

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 13/05/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad