

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए', अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ A ” BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER And**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2113/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2009-10)

The ACIT Circle-2(1)(1) Ahmedabad	<b>बनाम/</b> Vs.	M/s.Intas Pharmaceuticals Ltd. 203, Chinubhai Centre Nehru Bridge Corner Ashram Road Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC 15120 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri S.K. Dev, Sr.DR
प्रत्यर्थी की ओर से/Respondent by :	Shri V.R. Chokshi, AR

सुनवाई की तारीख / Date of Hearing	02/07/2019
घोषणा की तारीख /Date of Pronouncement	03/07/2019

**आदेश / O R D E R**

**PER SHRI RAJPAL YADAV, JUDICIAL MEMBER :**

The Revenue is in appeal before the Tribunal against the order of Ld.Commissioner of Income Tax(Appeals)-2, Ahmedabad [‘CIT(A)’ in short] dated 02/06/2017 passed for Assessment Year (AY) 2009-10.

2. The Registry has pointed out that appeal filed by the Revenue is time barred by 20 days. In order to explain the delay, the Revenue has filed an application on 22/09/2017 contending therein that Pr.CIT-2 had a concurrent charge of other regions and was over burden with various administrative work. Hence, on account of work-load, this file missed from his attention for granting approval for filing the appeal.

3. With the assistance of Ld.Representatives, we have gone through the records and perused the application for condonation of delay. The Id.counsel for the assessee has not seriously objected to the application of the Revenue. Therefore, considering the plausible explanation given by the Revenue, we condone the delay and proceed to decide the appeal on merit.

4. The solitary grievance of Revenue is that the Ld.CIT(A) has erred in deleting the disallowance of Rs.1,79,03,547/- which was disallowed by the Assessing Officer with the aid of section 14A read with Rule 8D.

5. The brief facts of the case are that assessee has filed its return of income on 30/09/2009 declaring total income of Rs.82,96,56,240/-. The case of the assessee was selected for scrutiny assessment and notice

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u/s.143(2) of the Act was issued and served. Thereafter, the assessment was reopened and notice u/s.148 was issued on 22/03/2016. The Assessing Officer has observed that assessee has made an investment of Rs.2,10,76,28,223/- in the partnership firm and received share of profit at Rs.76,77,95,809/- which has been claimed exempt u/s.10(2)A of the Act. The assessee has disallowed expenditure of Rs.36,10,257/- u/s.14A of the Act. The Ld.AO was not satisfied with the amount disallowed by the assessee *suo moto*. Therefore, he worked out the disallowance as under:

*“The assessee has disallowed expenditure of Rs.36,10,257/- u/s.14A of the Act. While making disallowance, the assessee has not considered the disallowance u/s.14A alongwith with the Rule 8D of the I T Rules. Therefore, by applying the Rule 8D, the disallowance u/s.14A will comes to Rs.2,15,13,804/- as per the working given below:*

<i>I</i>	<i>Expenditure incurred as claimed by assessee</i>			
	<i>(A) Amount of expenditure by way of interest debited in the P&amp;L A/c.</i>			<i>63673827</i>
		<i>Opening Value</i>	<i>Closing Value</i>	
	<i>(B) Average investment on which tax free income is received or</i>	<i>1099397085</i>	<i>2107628223</i>	<i>1603512654</i>

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	<i>receivable</i>			
	<i>(C) Average value of total assets as appearing in the Balance Sheet</i>	6321815433	8808588397	7565201915
<i>II</i>	<i>(A) X (B) / (C)</i>			13496241
<i>III</i>	<i>0.5% of the average value of investment on which tax free income is received or receivable</i>			8017563
	<i>TOTAL = I + II + III</i>			21513804

*Therefore, the difference of Rs.1,79,03,547/- (i.e. 21513804 minus 3610257) on account of the short disallowance u/s.14A is disallowed and added to the total income. Since the assessee has furnished inaccurate particulars of income penalty proceedings u/s.27191)(c) of the Act initiated separately.*

***(Disallowance u/s.14A Rs.1,79,03,547/-)''.***

6. Dissatisfied by the disallowance, assessee carried the matter before the CIT(A). It has filed detailed written submission which has been reproduced by the Ld.First Appellate Authority. The Ld.CIT(A) thereafter deleted the disallowance by recording following finding:

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“ 2.5. On going through the details, it has been noticed that the appellant has made the various investments of which details are as under:-

			Amount in INR	
Particulars			As on 31/03/2009	As on 31/03/2008
(A)	SrNo	In Subsidiary Companies - Unquoted, fully paid-up		
	1	Accord Healthcare Limited	500,000	500,000
	2	Intas Pharma Limited	147,500,000	500,000
	3	Astron Research Limited	87,668,631	0
	4	Andhre Laboratories Limited	543,68,000	54368000
	5	Accord Healthcare Limited, UK	1160822000	758985000
	6	Accord Healthcare Inc., NJ, USA	2,283,078	2,283,078
	7	Accord Healthcare (Pty) Limited, SA	42782000	42782000
	8	Accord Healthcare NZ Limited, NZ	12,891,980	12,891,980
	9	Accord Healthcare Inc., NIC, USA & Accord NJ	3231897 1698000	3,231,897 1698000
	10	Accord Healthcare Inc., Canada	18639000	18639000
	11	Accord Healthcare S.A.C., Peru	25853000	25853000

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	12	Accord Farma S.A. DE C.V., Mexico	143833000	25108000
	13	Misc Other :Quoted: Shree Rama Multitech Shares (1200sh):	6,000	6,000

(B)		In Partnership Firm		
		In the Capital of Intas Pharmaceuticals	210126000	110126000
		Total	2107628223	1099397085

2.6. It has been noticed that all these subsidiary companies from SI. No. 2, 3 & 5 to 12 are for the purpose of strategic investments and also the companies listed at SI. No. 5 to 12 are foreign companies of which dividend income is not exempt. Therefore, the provisions of section 14A on these companies are not applicable. Further, the appellant has not received any dividend income during the year under consideration and the investment being the strategic investment out of commercial expediency with no intention to earn the dividend income or capital gains. Moreover, the appellant had the share capital and reserves and surplus at Rs.381.4 crores which was much more than the average investment in the capital of the partnership firm namely; M/s. Intas Pharmaceuticals.

2.7. Further with regard to investment in share of Accord Healthcare Limited, Andhre Labs Limited and Shree Ram Multi Tech which Was stated to be made out of own funds. Since, the appellant had the huge funds in the form of reserves and surplus, therefore such amount of investment would not attract any disallowance of interest. Although the disallowance under Rule 8D(2)(iii) @ 0.5% towards administrative and other expenses would be worked out and the disallowance to that extent is **confirmed** as discussed below.

2.8. Therefore, following the decision in appellant's own case in A. Y. 2011-12, after having held that the accounts of the appellant in respect of administrative expenditure incurred for earning the income which does not form part of the

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*total income are not correct, the administrative expenditure incurred will have to be worked out by applying the*

*Provisions of Rule 8D. It is noted that the AO has applied Rule 8D for working out the disallowance. Accordingly, the application of Rule 8D(2)(iii) by the AO for making the disallowance under section 14 A out of general expenses is upheld and the same is worked out as under:-*

<i>(I)</i>	<i>Average balance of investment in shares of Accord Healthcare Limited, Andhre Labs Limited and Shree Ram Multi Tech (Rs.5,00,000/- + Rs.5,43,68,000/- + Rs.6,000/-)</i>	<i>Rs.5,48,74,000/-</i>
<i>(ii)</i>	<i>Average balance in capital account towards capital employed</i>	<i><u>Rs. 16,01,26,000/-</u></i>
	<i>Total</i>	<i>Rs.21,50,00,000/-</i>

*0.5% of average investment of Rs.21,50,00,000/- works out to Rs. 10,75,000/-*

*2.9. Since the appellant himself has made the suo moto disallowance of Rs.36,10,257/- in the return of income, therefore, no further disallowance is called for. Consequently, the disallowance made by the AO of Rs.1,79,03,547/- is deleted.”*

7. With the assistance of Ld. Representatives, we have gone through the record. There is no dispute with regard to the proposition that expenses incurred for receiving share of profit from the partnership-firm which is exempt from tax required to be disallowed u/s.14A of the Act.

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The Id.counsel for the assessee was conscious of the fact that Special Bench of ITAT Ahmedabad in the case of Vishnu Anant Mahajan vs. ACIT 16 ITR (Trib) 621, has settled this controversy. Thus, the dispute remains about quantification of the expenses which are required to be disallowed. It has been demonstrated before us that total investment in the partnership-firm was of Rs.210.07 crores. It has interest-free funds of Rs.381.4 crores in the shape of share capital and reserves & surplus. Thus, out of interest expenditure, no disallowance deserves to be made. As far as disallowance required under sub-clause(iii) of Rule 8D(2) for taking care of administrative expenses is concerned that disallowance has to be made at 0.5% of the average value of investment which has yield exempt income. The Ld.CIT(A) has worked out this disallowance at Rs.10,75,000/- which is far more than disallowance worked out by the assessee *suo moto*. It is pertinent to observe that Assessing Officer has worked out a sum of Rs.80,17,563/- being 0.5% of the average value of investment on which tax-free income is received or receivable. This finding of the Assessing Officer is factually incorrect. He appears to have taken into consideration the amount of investment on which no exempt income is available. The Ld.First Appellate Authority has considered this aspect while working out the average value of investment for the purpose of working out the disallowance at 0.5%. Thus, considering the order of the CIT(A), we do not find any error in it and accordingly appeal of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the Court on 3<sup>rd</sup> July-2019 at Ahmedabad.**

Sd/-

**( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 03 / 07 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

Sd/-

**( RAJPAL YADAV )  
JUDICIAL MEMBER**

**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)-2, Ahmedabad
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