

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

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2006/Ahd/2016
WITH
CROSS OBJECTION No. 136/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2012-13)

DCIT, Circle – 1(1)(1), 'A' Wing, Room No. 309, 3 rd Floor, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad - 380015	बनाम/ Vs.	Adani Properties Pvt. Ltd. 8 th Floor, Shikhar, Nr. Mithakhali Circle, Navrangpura, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA3182H		
(Appellant / Respondent)	..	(Respondent / Cross Objector)

राजस्व की ओर से/Revenue by :	Shri L. P. Jain, Sr. D.R.
अपीलार्थी ओर से /Assessee by :	Shri P. M. Mehta, A.R.

सुनवाई की तारीख / Date of Hearing	08/04/2019
घोषणा की तारीख /Date of Pronouncement	04/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 24.05.2016 arising in the assessment order dated 18.03.2015 passed by the Assessing

Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The assessee has also filed cross objection in the Revenue's appeal as captioned above.

3. The grounds of appeal raised by the Revenue read as under:-

“(1) That the ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.3,28,28,574/- made on account of disallowance u/s 14A r.w. Rule 8D of the Act.

(2) That the ld.CIT(A) erred in law and on facts in deleting Rs.21,98,109/- out of the addition of Rs.23,08,469/- made on account of disallowance of legal expenditure treated as capital expenditure.”

4. The grounds of appeal raised by the assessee in its cross objection read as under:-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding partial disallowance of Rs.19,49,768/- u/s. 14A of the I.T. Act out disallowance of administrative expenses, as narrated on pages 24 and 25 of his order.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding partial disallowance of Rs.19,49,768/- u/s. 14A of the I.T. Act in the book profit of assessee u/s.115JB.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding disallowance of Rs.40,074 being employees' contribution to P.F. and ESI u/s. 36[1][va], following the decision of the Jurisdictional High Court i.e. Hon'ble High Court of Gujarat in case of Gujarat State Road Transport Corporation 366 ITR 170.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding disallowance of Rs.1,10,300 being payment debited to ELP for obtaining Search Report for acquisition of Delhi Golf Link Properties Pvt. Ltd., as capital expenditure out of the total professional fees of Rs.23,08,469.”

5. First ground of Revenue's appeal concerns addition of Rs.3,28,28,574/- by invoking Section 14A of the Act.

6. In the course of scrutiny assessment, it was noticed by the AO that assessee has earned dividend income of Rs.2.52 Crores from huge investments made in shares/mutual funds which give rise to tax free income. The AO accordingly invoked provisions of Section 14A of the Act and computed the disallowance under s.14A of the Act by applying the statutory formula under Rule 8D of the IT Rules. The disallowance towards interest expenditure was worked out to Rs.2,77,28,566/- by applying formula under Rule 8D(2)(ii). A disallowance of Rs.1,21,69,984/- was made towards administrative and managerial expenses by applying formula under Rule 8D(2)(iii) of the IT Rules. The aggregate disallowance was thus worked out to Rs.3,98,98,550/-.

7. In the first appeal, the CIT(A) deleted the disallowance made towards interest expenditure under Rule 8D(2)(ii) of the IT Rules and restricted the disallowance on administrative expenditure of Rs.19,49,768/-. The relevant operative part of the order of the CIT(A) is reproduced hereunder for ready reference:

“3.4 I have carefully considered the Assessment Order and the submission filed by the Appellant The Assessing Officer has observed that Appellant has earned dividend income of Rs. 2.52 crores and has made huge investment in shares/mutual funds which result into tax-free income. For making such investment and earning dividend, Appellant is required to incur various expenditure hence expenditure attributable to earning of such exempt income is required to be disallowed hence he applied provisions of Rule 8D and made aggregate disallowance of Rs. 3,47,78,342/- after giving relief of interest disallowance made in Return of Income for Rs.51,20,208/-. On the other hand, Appellant has argued that Assessing Officer has made disallowance on closing investments of Rs. 258.87 crores. It is argued that during the year under consideration it has made fresh investments of Rs. 28.92 crores in DB Properties Pvt. Limited and Delhi Golf-Link Properties Pvt. Limited and proportionate interest attributable to such investments to the extent of use of borrowed funds amounting to Rs. 51.20 lacs is already disallowed in Return of Income. It was also argued that investment is also made in mutual funds and same are growth schemes from which no dividend would ever be earned hence such investments cannot be subject matter of disallowance under Section 14A. With regard to balance investments in the shares of Adani Enterprises for

Rs. 225.32 crores, it was argued that same were made in earlier years and in those years there was no interest bearing borrowings and even Assessing Officer has not made any proportionate interest disallowance except bank charges in those assessment years hence such investment should be excluded for making proportionate interest disallowance. So far as disallowance of administrative expenditure under Rule 8D(2)(iii) is concerned, it was argued that disallowance made by Assessing Officer has exceeded actual expenditure debited in Books of Account and majority of expenditure debited in Books of Account and claimed as expenditure pertains to rent income which is separately disclosed as income from business hence no such disallowance is called for.

3.5 On careful consideration of entire facts, it is observed that Assessing Officer has computed disallowance under Section 14A at Rs.3,98,98,550/- which includes proportionate interest disallowance for Rs. 2,77,28,566/- and administrative expenditure at Rs.1,21,69,984/-. So far as proportionate disallowance is concerned, following facts emerge from Appellant's submissions as well as from Assessment Order:

- (i) The Appellant has shown opening investments of Rs.227.91 crores and closing investments of Rs.258.87 crores.*
- (ii) During the year under consideration Appellant has made two major investments of Rs. 28,92 crores in DB Properties Pvt. Limited and Delhi Golf Link Properties Pvt. Ltd., out of borrowed funds acquired from Adani Infrastructure & Developers Pvt. Limited and Adani Logistics Limited. Both the loans taken during the year under consideration is repaid before close of financial year. It is pertinent to note that repayment of such loan is out of interest-free funds available with Assessee and no new interest bearing loan has been used for making repayment of such loan hence both the investments at year end are out of interest-free funds available with Appellant, this fact is further substantiated from Audited Annual Accounts that interest bearing loan at the yearend pertains to Mahasukh Adani Family Trust for Rs.26.08 crores and such loan is received on 8th June, 2011 which is much earlier to repayment of loan and same was used for giving advance.*

As Appellant has used borrowed funds for part period, it has already made disallowance of proportionate interest at Rs. 51,20,208/- in Return of Income hence such investment cannot be considered for making proportionate disallowance of interest under Rule 8D(2)(ii).

- (iii) The closing investments of Rs. 4.61 crores and opening investments of Rs. 0.96 lacs is in growth scheme of mutual fund which is not capable of earning any exempt income hence no proportionate disallowance of interest can be made on such investment.*

- (iv) *So far as balance closing investment of Rs.225.32 crores is concerned, it is in the shares of Adani Enterprises Limited which were made in earlier Assessment Years wherein Appellant has no interest-bearing funds. Even entire opening balance of investment including shares of Adani Enterprises Limited are out of interest-free funds available with Appellant Company for Rs.235.87 crores. It is pertinent to note that Appellant has not claimed or debited any interest expenditure in A.Y. 2011-12 or earlier years wherein such investments are made which proves that such investments have direct nexus of utilisation of interest-free funds. It is further observed that even new loan taken during the year under consideration is not used for making repayment of loan taken in earlier year hence even on this ground, no proportionate interest disallowance is called for.*
- (v) *In the nutshell, the Appellant has established the nexus of use of interest-free funds for making investment in shares and whenever borrowed funds are used, proportionate interest disallowance is already made in Return of Income hence there is no need for making separate disallowance under Rule 8D(2)(ii) for Rs.2,77,28,566/-.*

3.6 So far as disallowance of administrative expenditure under Rule 8D(2)(iii) is concerned, Assessing Officer has made disallowance of Rs. 1,21,69,984/- whereas actual expenditure debited in Books of Account other than purchase of stock-in-trade, financial cost is Rs. 79,78,592/-. When expenditure debited in Books of Account is lower than disallowance computed under Rule 8D, disallowance cannot be made simply relying on Rule 8D and this view is supported by decision of Hon'ble Ahmedabad ITAT in the case of Adani Port Infrastructure Limited V/s DCIT (referred supra) and decision of Hon'ble Delhi ITAT in the case of Gillete Group India Pvt. Limited (referred supra).

The Appellant has also argued that expenditure debited in Books of Account are mainly relating to business activity of letting out of properties hence such expenditure should be excluded while making disallowance. This view was upheld by my predecessor CIT (Appeals) in A.Y. 2011-12 vide his order dated 13th August, 2014 wherein he has stated as under:

"4.2 Identical issue came up for consideration in Appellant's own case in the immediately preceding A.Y. 2010-11. Vide my order dated 27/08/2013 it was held as under:

"4.4 I have given my careful consideration to the facts of the case. The disallowance made by the AO comprises of two components. The first component is of Rs.41,577 under Rule 8D(2)(ii). Since no interest expenditure was incurred by the Appellant on monies borrowed, disallowance of the said sum is not sustainable. It is deleted. The second component of the disallowance is of Rs. 57,69,0377- under Rule 8D(2)(iii). As seen from the break-up of the

expenditure debited to Profit & Loss Account furnished by the Ld. AR, most of the expenditure incurred was not in connection with earning the exempt income. On a perusal of the various items of the expenditure, it is seen that the following expenditure was not for any specific purpose.

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>Insurance</i>	<i>44,456</i>
<i>2</i>	<i>Auditor</i>	<i>27,575</i>
<i>3</i>	<i>Others</i>	<i>47,556</i>
<i>4</i>	<i>Personal expenses</i>	<i>6,01,358</i>
	<i>Total</i>	<i>7,20,945</i>

Therefore, it is considered reasonable to restrict the disallowance under Rule 8D(2)(iii) to Rs. 7,20,945. Balance expenditure incurred cannot be said to be for earning exempt income and, therefore, disallowance of the balance amount is deleted.

4.5 To sum up, out of the disallowance made, disallowance to the extent of Rs. 7,20,945 is upheld. Balance disallowance is deleted. These grounds of appeal are partly allowed."

In the year under consideration, the following expenditure was not found to be for any specific purpose:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>Insurance</i>	<i>44,941</i>
<i>2</i>	<i>Auditor fees</i>	<i>31,436</i>
<i>3</i>	<i>Other expenses</i>	<i>91,054</i>
<i>4</i>	<i>Personal Expenses</i>	<i>8,84,536</i>
	<i>Total</i>	<i>10,51,967</i>

Facts remaining the same, following the above order, impugned disallowance is restricted to Rs.10,51,967. Balance disallowance is deleted. This ground of appeal is partly allowed."

Considering these facts, disallowance is required to be recomputed as under:

<i>Sr. No.</i>	<i>Particulars of Expenditure</i>	<i>Amount</i>	<i>Amount</i>	<i>Remarks</i>	<i>Amount disallowable (Rs.)</i>
<i>1</i>	<i>Other Expenses</i>		<i>3,586,663</i>		

	<i>(i) Rate & Taxes</i>	65,783		<i>Municipal tax paid for various residential flats & Milestone, Shrijibag which are rented properties including company professional tax of Rs.2000/-</i>	
	<i>(ii) Repairs & Maintenance Building</i>	461,473		<i>Paid to towards maintenance of society wherein the flats are rented. & Printer & Computer AMC.</i>	
	<i>(iii) Electricity Expenses</i>	181,151		<i>Paid on rented properties</i>	
	<i>(iv) Insurance</i>	61,565		<i>Paid on rented properties. Considered by CIT(A) in AY 2011-12</i>	61,565
	<i>(v) Auditor</i>	30,337		<i>Paid on rented properties. Considered by C/T(A) in AY 2011-12</i>	30,337
	<i>(vi) Legal & Professional Fees</i>	2,327,737		<i>Professional relates to ROC filing expenses. legal charges and others. (The Assessing Officer has already made disallowance of Rs 23,08,469 separately in assessment order)</i>	
	<i>(vii) Security Expenses</i>	126,599		<i>Paid for properties</i>	
	<i>(viii) Loss on Non current investments</i>	38,000		<i>Already disallowed in Return of Income</i>	
	<i>(viii) Others</i>	294,018		<i>Related to business of renting properties. Considered by CIT(A) in AY 2011-12</i>	2,94,018

2	<i>Personnel Expenses</i>		1,700,616	<i>For timely collection of rent and payment of expenses. Considered by CIT(A) in A Y 2011-12</i>	17,00,616
3	<i>Depreciation</i>		2,691,313	<i>Related to business of renting of renting of properties</i>	
	Total		7,978,592		20,86,536
	<i>Less: Suo motu disallowance in return of income</i>				1,36,768
	<i>Amount disallowable u/s 14A</i>				19,49,768

*In view of these facts, disallowance of administrative expenditure is restricted at Rs.19,49,768/-. In the nutshell, disallowance under Section 14A for Rs.3,47,78,342/- is restricted at Rs.19,49,768/-. **This Ground of Appeal is partly allowed.***

8. Aggrieved by the relief, the Revenue preferred appeal before the Tribunal. The assessee has also objected to retention of partial disallowance towards administrative expenditure by way of its cross objection.

9. We have perused the orders of the authorities below and considered the rival submissions. We find that the CIT(A) has taken into account the explanations and submissions made on behalf of the assessee threadbare while adjudicating the issue. It was noticed that the assessee company itself has disallowed interest amounting to Rs.51,20,208/- in its return of income on utilization of funds deployed towards investments in group concerns. It was pointed out by the assessee before the CIT(A) that interest free funds in the form of share capital and reserves & surplus stands at Rs.235.34 Crores which is in excess of the investments of Rs.227.91 Crores made by it. It was also demonstrated that the significant investments were made in the earlier

years out of its own interest free resources. The CIT(A) after taking note of the various facts as reproduced above came to the conclusion for non applicability of Rule 8D(2)(ii). No substantive fallacy has been pointed out on behalf of the Revenue in the action of the CIT(A) except placing reliance upon the order of the AO. We find that the action of the CIT(A) is in tune with law and judicial precedents. Without repeating the contents of the CIT(A), we endorse the same.

10. As regards the disallowance of administrative expenditure, the AO has computed the disallowance at Rs.1,21,69,984/- under Rule 8D(2)(iii) as noted above. The CIT(A) has analysed the nature of expenditure and restricted the same to Rs.19,49,768/- as per the tabulation reproduced in the CIT(A)'s order. Both Revenue and assessee are aggrieved by the aforesaid action of the CIT(A). The Revenue seeks disallowance of the amount as computed under Rule 8D(2)(iii) whereas the assessee has disputed the analysis of the CIT(A). It is the case of the assessee that itemized expenditure can be demonstrably relatable to various segment of taxable income. For instance, the disallowance of Rs.61,565/- made by the CIT(A) on account of insurance expenses incurred was paid for rented properties and thus has no relation to the exempt income. Likewise, the personnel expenses of Rs.17,00,616/- is also claimed by the assessee to be towards timely collection of rent expenses. The assessee has urged for deletion of the aforesaid two items out of the disallowance made by the CIT(A) amounting to Rs.19,49,768/-.

11. We do not find merit in the plea of the Revenue for applicability of Rule 8D(2)(iii) where the specification of the nature of the expenditure is available and such expenditure can be reasonably identified toward revenue from taxable operations and revenue from income which is exempt. On the other hand, we however find

substance in the plea of the assessee partially. Rs.61,565/- on account of insurance expenses has not apparent connection with the investment giving rise to tax free income. Thus, such expenses cannot find part of disallowance under s. 14A of the Act. The claim of personnel expenses of Rs.17,00,616/- disputed by the assessee to be attributable to collection of rent only is however without any cogent evidence. The assessee is engaged in the multiple business viz. trading of commodities, deriving rent income and also generating exempt income. Having regard to the various stream of income generated by the assessee, the personnel expenses, to our mind, can be fairly estimated to be $1/3^{\text{rd}}$ of the total costs. The assessee thus gets relief of Rs.11,33,744/- on this score. The total relief thus works out to Rs.11,95,309/- against the disallowance of Rs.19,49,768/- confirmed by the CIT(A). Thus, while Ground No.1 of the Revenue's appeal is dismissed, the Ground No.1 of the assessee's cross objection is allowed in part.

12. Ground No.2 of the Cross Objection is consequential. The adjustment to the tune of Rs.19,49,768/- made under clause (f) to Section 115JB shall be reduced by the AO in line with the disallowance sustained under the normal provisions. The claim of the assessee that no adjustment is called for while computing book profit is violative of Explanation 1(f) referred to Section 115JB of the Act and thus cannot entertained. No blanket exemption can read in the special bench decision in Vireet's case in this regard. Ground No.2 of Cross Objection is thus partly allowed.

13. Ground No.2 of the Revenue's appeal concerns disallowance of legal expenditure. The CIT(A) has dealt with the issue as under:

“7.3 I have carefully considered the Assessment Order and the submission filed by the Appellant The assessing officer observed that

the appellant has claimed professional fees amounting to Rs. 23,08,469/- being Rs. 1,10,300/- debited to ELP for research report for acquisition of Delhi Golf Link properties Pvt. Ltd. and Rs.21,98,169/- being amount payable towards professional fees for various legal assistance. He therefore held that as the payments were made as reimbursement of fees for search report for acquisition of Delhi Golf Link properties Pvt. Ltd. it was in the nature of capital expense and by no stretch of imagination can be said to be revenue expenditure. On the other hand, Appellant has argued that payment of Rs.21,98,169/- made to Economic Law Practice is for retainer fee and for services provided during the year hence it is allowable as revenue expenditure. Further, payment of Rs. 1,10,300/- made to ELP for obtaining search report for acquisition of Delhi Golf Link Properties Pvt. Limited, it is submitted that investment was made for expansion of existing business hence such expenditure is allowable revenue expenditure.

On careful consideration of entire facts, it is observed that payment of Rs.1,10,300/- made to ELP for obtaining search report for acquisition of shares is towards new capital investment and which cannot give Appellant any benefit of revenue in nature. By making such investment, Appellant is not going to earn any revenue receipt hence such expenditure is capital expenditure and addition made by Assessing Officer to that extent is upheld. So far as balance payment of Rs.21,98,169/- is concerned, it is for retainership wherein Appellant can obtain legal advice as and when required for direct tax, indirect tax or any other legal matter. The said amount is payable every year and recurring in nature and same does not give Appellant any enduring benefit. By obtaining such services, Appellant can obtain legal assistance on day-to-day basis and as per provisions of Section 37(1) of the Act; it is revenue expenditure and not capital expenditure. Thus, addition made by Assessing Officer for Rs.23,08,469/- is restricted to Rs. 1,10,300/-. This ground of appeal is partly allowed.

13.1 As regards professional fees component of Rs.21,98,169/- disputed by the Revenue, we find that CIT(A) has observed that such expenditure has been incurred for legal assistance taken by the assessee on day-to-day basis for the purposes of business. Such expenditure in our view has been rightly treated as revenue expenditure by the CIT(A). The Ground No.2 of the Revenue's appeal thus is without any merit.

13.2 As regards expenses of Rs.1,10,300/- towards professional fees for search report for acquisition of Delhi Golf Link Properties Pvt. Ltd., the CIT(A) observed that the aforesaid expenditure is towards acquisition of new capital investment. This being so, the CIT(A) has

rightly treated the same to be capital expenditure. Ground No.4 of the cross objection of the assessee in this regard is also thus bereft of any merit. Ground No.4 of the Cross Objection is accordingly dismissed.

14. We are now left with Ground No.3 concerning disallowance of Rs.40,074/- towards belated employees' contribution to PF and ESIC under s.36(1)(va). We observe that CIT(A) has rightly concluded the issue against the assessee in the light of the decision of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation 360 ITR 170 (Guj). We thus see no merit in Ground No.3 of the cross objection raised on behalf of the assessee.

15. In the result, the appeal of the Revenue is dismissed and cross objection of the assessee is partly allowed.

This Order pronounced in Open Court on 04/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 04/07/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।