आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

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

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 2594 & 2612/Ahd/2017

(**निर्धारण वर्ष /** Assessment Years : 2013-14 & 2014-15)

The Spunpipe & Construction Co. (Baroda) Pvt. Ltd. A/505-506, Alkapuri Arcade, 5th Floor, Opp. Hotel Welcome Group, R. C. Dutt Road, Baroda - 390007	**बनाम**/ Vs.	**The D.C.I.T.** Circle- 2(1)(1), Aayakar Bhavan, Race Course Circle, Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACT6738R		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri A. C. Shah, A.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / **Date of Hearing**	02/07/2019
घोषणा की तारीख /**Date of Pronouncement**	09/07/2019

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the orders of the Commissioner of Income Tax (Appeals)-2, Vadodara ('CIT(A)' in short), dated 20.07.2017 & 31.10.2017 arising in the assessment orders dated 22.03.2016 & 16.12.2016 passed by the Assessing Officer (AO) under s. 143(3) of

the Income Tax Act, 1961 (the Act) concerning AYs. 2013-14 & 2014-15.

2. The grievances raised being common, both the cases were heard together and disposed of by the common order.

3. We shall first take up assessee's appeal in ITA No. 2594/Ahd/2017 concerning AY 2013-14.

ITA No. 2594/Ahd/2017-AY-2013-14

4. The grounds of appeal raised by the assessee read as under:-

> *"1. The learned CIT(A) has erred in confirming the disallowance of Rs. 2,57,697 under Section 14A to the regular income in as much as the assessee has sufficient interest free funds and that the question of disallowance under Section 14A does not arise.*
>
> *1.1 The appellant says and summit that the onus is on the AO to prove that the assessee has incurred expenditure in earning exempt income.*
>
> *2. The learned CIT(A) has erred in confirming the addition of Rs. 49,902 under Section 36(1)(va) on the ground that employees contribution towards PF is not paid within due date in as much as it is paid before the end of the month and that in any case it is paid before the end of financial year.*
>
> *3. The learned AO ought to have computed the business income on sale of flats by deducting fair market value on the date of conversion of land from the sale proceeds of the flats and that all relevant material is on record."*

5. When the matter was called for hearing, the learned AR referred to the assessment order and submitted that the disallowance made by the AO under s.14A of the Act towards expenditure attributable the exempt income comprises of Rs.1,39,076/- under Rule 8D(2)(ii) towards proportionate interest expenditure and Rs.1,18,621/- towards administrative expenditure Rule 8D(2)(iii) of the IT Rules. Aggregate disallowance was thus made at Rs.2,57,697/-. In the context of interest disallowance of Rs.1,39,076/-, the learned AR referred to the

financial statement placed by way of paper book and submitted that the investment having potential to yield dividend income is Rs.2.80 Crore whereas the assessee holds its own funds in the vicinity of Rs.22.82 Crores. It was thus submitted that the own funds at the disposal of the assessee surpasses the corresponding investment in a very significant way. This being so, a presumption would arise in favour of the assessee that own funds have been utilized for investments giving rise to exempt income in the light of long line of judicial precedents including; (i) CIT vs. UTI Bank Ltd. [2013] 32 taxmann.com 370 (Guj), (ii) CIT vs. Reliance Utilities & Power Ltd. [2009] 313 ITR 340 (Bom.) & (iii) CIT vs. HDFC Bank Ltd. 366 ITR 505 (Bom.). As regards administrative expenditure, the learned AR submitted that only reasonable disallowance should be made for an exempt income of Rs.10,34,094/- and estimations of Rs.1,18,621/- by applying family under Rule 8D(2)(iii) is excessive and uncalled for.

6. The learned DR for the Revenue relied upon the orders of the lower authorities.

7. In the light of the fact that own funds are in substantially excess of the corresponding investment, there is no warrant to invoke Rule 8D(2)(ii) in view of the judicial precedents noted above. Therefore, disallowance of Rs.1,39,076/- under Rule 8D(2)(ii) requires to be deleted by the AO. As regards the administrative and general expenses of Rs.1,18,621/-, the assessee could not explain with evidence about the actual expenditure attributable to earning of such income. The statute has provided a formula for ascertaining disallowance which cannot be ordinarily departed from. No compelling circumstances have been shown. Therefore, we decline to interfere with the disallowance of Rs.1,18,621/- made under Rule 8D(2)(iii) of the IT Rules.

8. Ground No.1 of the assessee is partly allowed.

9. Ground No.2 concerns disallowance of Rs.49,902/- under s.36(1)(va) towards default in payment of employees' contribution to PF. In view of the decision of the Hon'ble Gujarat High Court in case of CIT vs. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj), we do not find any merit in the grievance of the assessee on this score.

10. Ground No.2 of the assessee's appeal is dismissed.

11. Ground No.3 of the assessee's appeal concerns method of computation of business income as a consequence of sale of flat. It is the case of the assessee that it has converted certain parcels of land admeasuring 8429 sq.mtr. purchased during FY 1994-95 in stock-in-trade on 31.03.2008. The fair market value (FMV) as on 31.03.2008 as per approved valuer report dated 20.03.2008 stands at Rs.4,88,88,200/-. It was submitted that out of 8429 sq.mtr. 3025 sq.mtr. were sold in FY 2010-11 concerning AY 2011-12. The balance land of 5404 sq.mtr. was used for construction of building project (Arun Vila Scheme) from FY 2008-09 onwards, The construction started in FY 2008-09. Some portions of the flats were ready during FY 2011-12 i.e. AY 2012-13. The assessee company sold three flats in FY 2012-13 concerning AY 2013-14 in question. The assessee submitted all the relevant details in the course of assessment proceedings for the preceding AY 2012-13. The assessee prepared the computation of income correctly for AY 2012-13. However, the assessee committed mistake during AY 2013-14 in question as well as in AY 2014-15 & 2015-16. The leaned AR for the assessee referred to the statement of income and assessment order for receiving AY 2012-13 to demonstrate the bonafides in the act of the assessee.

11.1 The learned AR thus submitted that the cost price of FMV on the date of conversion of land into stock-in-trade is liable to be taxed as long term capital gain and excess consideration accrued / received over and above FMV is liable to be taxed as business income. In the AY 2012-13, the assessee committed a mistake of deducting only original cost price instead of bifurcating the profits into long term capital gain and business income having regard the FMV of the land at the time of conversion while drawing the computation of income. The learned AR insisted that all the relevant details are available on record and therefore sought a direction that the tax liability should be determined applying correct position of law notwithstanding error committed by assessee instead of taking advantage of mistake committed by the assessee. The learned AR relied upon the decision of Hon'ble Gujarat High Court in the case of *CIT vs. Mitesh Implex 367 ITR 85 (Guj.); CIT vs. Milton Laminates Ltd. [2013] 37 taxmann.com 249 (Guj)* and the decision of the co-ordinate bench in *DCIT vs. Greenland Infracon P. Ltd. in ITA No. 2029 & 2040/Ahd/2016 order dated 14.11.2018* for entertaining such plea for determination of the income. It was thus submitted that once the assessee is in a position to say that it has been over assessed under the provisions of the Act or has been fastened with tax liability no legitimately due even on account of assessee's own mistake or otherwise, the Revenue is under duty to assess correct income. The learned AR accordingly sought appropriate orders in this regard.

11.2 The learned DR relied upon the orders of the lower authorities without any further addition to it.

12. We have considered the submissions on behalf of the assessee carefully and perused the orders of the authorities below. We refer to the observations of the co-ordinate bench in para no.9 of the decision

rendered in the case of *Greeland Infracon (supra)* which is reproduced hereunder:

> *"9. It is trite that the authorities under the Act are under sacrosanct obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, mis-conception or not being properly instructed, is over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This is the view which flows from innumerable judgments including CIT vs. Shelly Products (2003) 261 ITR 367 (SC), S. R. Koshti vs. CIT (2005) 276 ITR 165 (Guj), Ester Industries vs. CIT (2009) 185 TAXMAN 266 (Delhi) and CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom). The essence of these decisions are that mere admission on the part of the assessee with respect to an addition/disallowance in its original return or in revised return would not ipso facto bar an assessee from claiming an expense or disputing an addition if it is otherwise permissible under law. It is thus well settled that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Revenue authorities cannot enforce untenable actions of the assessee against it which led to declaration of income of higher amount incorrectly. It is thus open to assessee to show that it was over assessed in correctly owing to its own mistake."*

13. In the light of the observations so made, we find merit in the plea of the assessee for setting right the error committed by the assessee. We, therefore, are disposed to entertain deviation in the claim originally made which may result in lower tax liability. The issue however has not been examined by the Revenue authorities on facts. Therefore, we consider it appropriate to set aside the issue to the file of the AO for fresh adjudication in the light of submissions to be made by the assessee with factual evidences before AO. It will thus be open to the assessee to show before the AO that it was over assessed incorrectly or subjected to higher tax in any manner owing to its own mistake. The AO shall determine the issue in accordance with law after giving fair opportunity to the assessee. Ground No.3 of the assessee's appeal is accordingly allowed for statistical purposes.

14. In the result, appeal of the assessee in ITA No. 2594/Ahd/2017 for AY 2013-14 is partly allowed.

ITA No. 2612/Ahd/2017-AY-2014-15

15. The grounds of appeal raised by the assessee read as under:-

> *"1. The learned CIT(A) has erred in confirming the disallowance of Rs. 3,61,645 under Section 14A to the regular income in as much as the assessee has sufficient interest free funds and that the question of disallowance under Section 14A does not arise.*
>
> *1.1 The appellant says and summit that the onus is on the AO to prove that the assessee has incurred expenditure in earning exempt income.*
>
> *2. The learned AO ought to have computed the business income on sale of flats by deducting fair market value on the date of conversion of land from the sale proceeds of the flats and that all relevant material is on record."*

16. As per 1st ground, the assessee has disputed the disallowance of Rs.3,61,695/- under s.14A of the Act. The issue being *peri materia* with Ground No.1 of the assessee's appeal in AY 2013-14, our observations therein would apply *mutatis mutandis*. The disallowance of Rs.2,24,364/- on account of interest expenditure by invoking Rule 8D(2)(ii) is directed to be deleted. In parity with observations made in AY 2013-14, the disallowance of Rs.1,37,280/- concerning AY 2013-14 is under Rule 8D(2)(iii) is however not interfered. Assessee thus partly succeeds in its appeal to the extent of Rs.2,24,365/- as against total disallowance of Rs.3,61,645/- carried out by the AO.

17. Ground No.1 of the assessee's appeal is accordingly partly allowed.

18. The grievance raised as per Ground No.2 is *peri materia* with Ground No.3 concerning AY 2013-14 (supra). In the light of observations made concerning AY 2013-14, the issue concerning Ground No.2 is set aside and restored to the file of the AO for fresh determination in accordance with law after giving opportunity to the assessee in the same manner as directed in AY 2013-14.

19. Ground No.2 of the assessee's appeal is allowed for statistical purposes.

20. In the result, appeal of the assessee in ITA No. 2612/Ahd/2017 for AY 2014-15 is partly allowed.

21. In the combined result, both appeals of the assessee are partly allowed.

This Order pronounced in Open Court on 09/07/2019

Sd/-	Sd/-
(RAJPAL YADAV)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 09/07/2019

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / 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 ।