

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI O. P. MEENA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2332/Ahd/2017
(Assessment Year : 2014-15)

Gujarat Power Corp. Ltd.
(GPCL), Block No.8, Sixth
Floor, Udhog Bhavan, GH
Road, Sector -11,
Gandhinagar.

Vs. Income Tax Officer,
Ward – 5,
Gandhinagar

[PAN No. AAACG 5596 J]
(Appellant)

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(Respondent)

Appellant by : Shri S. N. Soparkar, Sr. Advocate
with Parin Shah
Respondent by : Shri L. P. Jain, Sr. D.R.

Date of Hearing 17.09.2019
Date of Pronouncement 20.09.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.08.2017 passed by the Commissioner of Income Tax (Appeals) – Gandhinagar, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 06.12.2016 passed by the Income Tax Officer, Ward-5, Gandhinagar for Assessment Year 2014-15.

2. **Ground No. 1:-** The assessee has challenged the order passed by the Ld. CIT(A) in confirming the disallowance made under section 14A r.w.r. 8D.

At the time of the hearing of the instant appeal the Ld. Senior Counsel appearing for the assessee and submitted before us that the issue is squarely covered in assessee's own case for A.Y. 2011-12 under the order passed by the Co-ordinate Bench in assessee's appeal in ITA No. 1172/Ahd/2016 for A.Y. 2011-12, 1361/Ahd/2016 for A.Y. 2011-12 and 1928/Ahd/2016 for A.Y. 2012-13. However, the Ld. DR has failed to submit anything contrary to that of the contention made by the Ld. Senior Counsel appearing for the assessee in this regard.

3. Heard the parties, we have also perused the relevant materials available on record. The appellant is a Government company promoted by the Government of Gujarat mainly acted as nodal agency for augmenting power generation in the state of Gujarat, generation of power through wind mill, development of solar part etc. The appellant company declared its income at Rs. 8,65,350/- through its return filed on 29.11.2014 followed by a revised return of income on 24.02.2015 declaring total income at NIL. It is relevant to mention that assessee has suo moto disallowed Rs. 1,00,000/- as expenses relating to the earning of such exempt income. Upon perusal of the profit and loss account and the statement of income for the year under consideration it was found that the assessee has earned dividend income of Rs. 1,26,94,978/- from large amount of investment made in assets yielding tax free dividend and claimed as exempt under section 10 of the Income Tax Act. The assessment was finalized by the Ld. AO by making addition of Rs. 51,61,129/- as per provision of Section 14A being expenses incurred to earn income not forming part of total income.

4. In this regard we have carefully considered the order passed by the Co-ordinate Bench wherein the identical issue has been dealt with in ITA No. 1172/Ahd/2016 for A.Y. 2011-12 relying upon the judgment passed by the

Jurisdictional High Court in the matter of PCIT vs. Shreno Ltd. reported in [2019] 102 Taxman.com 129 (Guj.). The relevant portion whereof is as follows:-

“10. **Ground No.3** This ground relates to deleting of addition invoking section 14A of the Act to the tune of Rs.47,23,579/-.

11. Upon verification of the Profit and Loss account for A.Y. 2010-11, it was found that the assessee has earned dividend income of Rs.1,60,74,728/-. The assessee also claimed the income to be exempted u/s 10(34) of the Act. The assessee has further disallowed a sum of Rs.1,00,000/- towards expenses related to the earning of such exempt income. The details of investment made by the assessee in respect of three companies were duly submitted before the Learned AO. It was the case of the assessee that since there were no borrowing and no interest expenses incurred for earning the exempt income disallowance cannot be made. Further that, disallowance made in respect of interest expenses earlier was also deleted by the appellate authorities. Alternatively, the assessee submitted that if any expenses could be sought to have been incurred in relation to such exempt income the same could be all administrative nature for receiving the cheques and depositing the same in the Bank account. According to the assessee, the approximate sum was Rs.1000/- only to be the expenses incurred in relation to exempt income applying under provision of section 14A of the Act. However, since the assessee has already disallowed Rs.1,00,000/- no further disallowance can be made. However, applying section 14A r.w.r. 8D, the Learned AO disallowed Rs.47,23,579/- which was deleted by the Learned CIT(A) relying upon the judgment passed by the Jurisdictional High Court in assessee's own case in Tax Appeal No.1587 of 2009 for A.Y. 2002-03 dated 28.03.2011. Hence, the instant appeal before us.

12. At the time of hearing of the instant appeal, the Learned Senior Counsel appearing for the assessee submitted before us that the issue is squarely covered by the judgment passed by the Hon'ble Gujarat High Court in the matter of PCIT-vs-Shreno Ltd. reported in [2019] 102 taxmann.com 129 (Gujarat). On the contrary the Learned DR relied upon the order passed by the Learned AO.

13. Heard the respective parties, perused the relevant materials available on record. It appears from the records that the assessee has received dividend income of Rs.1,60,74,728/- from shares held by it. Taking into consideration the disallowance made in the earlier year the Learned AO has applied section 14A r.w.r. 8D of the Income Tax Rule and disallowed the impugned amount of Rs.47,23,579/-. However, it has been pointed out by the Learned CIT(A) that most of the investment made by the assessee were not earlier years.

We have also considered the judgment passed by the Jurisdictional High Court in the matter of PCIT-vs-Shreno Ltd. In the said matter, business funds and investment funds of the assessee were mixed up and it was not appreciated by the Learned AO in holding that the funds deployed for earning tax free income were entirely out of interest free funds and resultantly the entire interest cost was to be located on two activities leading to taxable income and thus section 14A r.w.r. 8D was invoked. The

Learned Tribunal in appeal, was of the view that the Assessing Officer had recorded a specific satisfaction before resorting to disallowance applying section 14A r.w.r. 8D to this effect that disallowance offering by the assessee was inadequate to cover the expenses incurred in earning tax exempt income. Application of Rule 8D cannot be automatic hence disallowance was deleted. It is pertinent to mention that the assessee had on its own added back an amount of Rs.1,00,000/- as disallowance under rule 14A towards administrative expenses incurred for earning such exempt income. The order passed by the Learned Tribunal was thus upheld. We find the assessee's case is squarely covered factually and legally, hence the assessee is entitled to relief as claimed for which was rightly allowed by the Learned CIT(A) by deleting the addition made by the Learned AO without any infirmity so as to warrant interference. The question is accordingly answered in the affirmative, i.e. in favour of the assessee and against the revenue. Consequently, the appeal fails and accordingly dismissed."

5. In the appeal preferred by the Revenue.

6. We further find that this particular issue has also been dealt with in ITA No. 1928/Ahd/2016 for A.Y. 2012-13. The relevant portion whereof is as follows:-

*"29. **Ground No.1** This ground relates to disallowance u/s 14A r.w.r. 8D to the tune of Rs.51,61,079/- under normal provision.*

30. Upon verification of the Profit and Loss account for A.Y. 2011-12, it was found that the assessee has earned dividend income of Rs.1,71,72,097/- during the year under consideration which was claimed to be exempt u/s 10(34) of the Act in the statement of total income. Further that, the assessee has disallowed suo moto sum of Rs.1,00,000/- as expenses relating to the earning of such exempt income. The assessee's case is that investment on which exempt income has been earned were not made from interest bearing funds as there are no borrowings made by the company which is evident from the balance sheet. Ultimately, applying section 14A r.w.r 8D the total disallowance has been worked out to Rs.51,61,079/- by the Learned AO, addition whereof was in turn confirmed by the Learned CIT(A). Hence, the instant appeal.

31. We find that this particular issue as already been dealt with by us in ITA No.1172/Ahd/2016 for A.Y. 2011-12 in Revenue's appeal whereby and whereunder such disallowance made by the authorities has been deleted by us relying upon the judgment passed by the Jurisdictional High Court in the matter of PCIT-vs-Shreno Ltd. reported in [2019] 102 Taxman.com 129 (Guj). Hence, in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, the ground of appeal preferred by the assessee is allowed."

Since the identical issue has already been considered by the Coordinate Bench in favour of the assessee we found no reason to observe

otherwise and hence in the absence of any changed circumstances respectfully relying upon the same we delete the addition made by the authorities below.

Ground No. 2:-

7. This ground relates to disallowance applying provision of Section 115JB while completing disallowances under section 14A r.w.r. 8D.

At the time of the hearing of the instant appeal the Ld. Senior Counsel appearing for the assessee submitted before us the issue is squarely covered in favour of the assessee in view of the judgment passed in the matter of ACIT, Circle 17(1) vs. Vireet Investment Pvt. Ltd. passed by the Special Bench of ITAT at Delhi which has been duly taken care of by the Co-ordinate Bench in passing orders in favour of the assessee in ITA No. 1928/Ahd/2016 for A.Y. 2012-13 in assessee's appeal. Hence, he prays for the same relief.

8. However, the Ld. DR failed to make any contrary submission as regards the contention made by the Ld. AR.

9. Heard the parties, perused the relevant materials available on records including the order passed by the Co-ordinate Bench in ITA 1928/Ahd/2016 for A.Y. 2012-13. The relevant portion whereof is as follows:-

*“32. **Ground No.2** This ground relates to disallowance u/s 14A by applying provision of Rule 8D to the tune of Rs.51,61,079/- while calculating income under provision of section 115JB of the Act.*

33. It appears that the Learned AO disallowed Rs.51,61,079/- u/s 14A of the Act by applying provision of Rule 8D while calculating income under the provision of section 115JB – MAT (disallowance as per assessment order Rs.52,61,079 = already disallowed in the return of Rs.1,00,000/-). It is the case of the assessee that the Learned AO erroneously disallowed u/s 14A by applying the provision of Rule 8D while calculating the income under provision of Section 115JB – MAT when it has been decided in number of judgments that so far as computation of adjusted book profit is concerned provision of section 2 and sub section 3 of section 14A cannot be imported into clause (f). In support of his argument he has also relied upon the judgment passed by the Special Bench of ITAT at Delhi in the matter of ACIT, Circle

17(1)-vs-Vireet Investment (P.) Ltd. On the other hand, Learned DR relied upon the order passed by the authorities below.

34. *Heard the respective parties, perused the relevant materials available on record. We have also carefully considered the judgment in the matter of Vireet Investment (P.) Ltd. The relevant portion whereof is as follows:*

- “■ *The question is, whether the amount or amounts of expenditure relatable to exempt income as contemplated in clause (f) to Explanation 1 to section 115JB(2) could be arrived at by resorting to provisions of section 14A or not. The department, contention, is that the object of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same and, therefore, it cannot be disputed that section 14A can be resorted to for finding out the expenditure relatable to any income which is exempt. [Para 6.2]*
- *When the question arises as to the applicability of similar provisions in different parts of the statute, then it is not only legitimate but proper to read both the provisions in their context. If context is same, different meaning cannot be assigned. It is to be found out that what mischief was intended to be remedied by inserting a particular section. The intention of the legislature once is manifested in a particular section in the statute then said intention cannot be given a different meaning, if a similar provision has been incorporated in a different section in the statute. The intention of the Legislature must be found out by reading the statute as a whole. [Para 6.3]*
- *Literal meaning cannot always be followed logically, because sometimes it tends to defect the obvious intention of the Legislature and results in producing a wholly unreasonable result. [Para 6.4]*
- *Thus, the submission of Department is that when basic object and purpose of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same, then it cannot be said that merely because section 14A has not been mentioned in clause (f), it has no application. The mode of computation with same purpose cannot be differently made merely because section 115JB creates a deeming section. The object of deeming provisions is to substitute the total income computed under normal provisions by that computed under MAT provisions. Submission of department is that this cannot be extended to computation for same items under normal as well as MAT provisions. Under the provisions of section 14A, both direct and indirect expenses in relation to earning of exempt income are to be reduced. Therefore, different meaning cannot be ascribed in clause (f) and, therefore, the submission of the assessee that only directly relatable expenditure is to be reduced, cannot be accepted. [Para 6.10]*
- *In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962.”*

We find from the issue citation that in the same set of facts the computation under clause (f) of explanation 1 to section 115JB as has been done by the authorities below u/s 14A r.w.r. 8D of the Income Tax Act, 1962 is not permissible and hence such disallowance is quashed the addition is therefore deleted. This ground of appeal preferred by the assessee is thus allowed.”

Since the identical issue has already been decided as aforesaid by the Co-ordinate Bench in favour of the assessee, in the absence of any changed circumstances, respectfully relying upon the same we delete the addition made by the authorities below. Hence, assessee's appeal is allowed.

Ground No. 3:-

10. It is general in nature and hence, no order needs be passed.
11. In the result, the assessee's appeal is allowed.

This Order pronounced in Open Court on	20/09/2019
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Sd/-
(O. P. MEENA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/09/2019

TANMAY, Sr. PS

TRUE COPY

Sd/-
(Ms. MADHUMITA ROY)
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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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