

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1939/Ahd/2014  
Assessment Year 2009-10**

Banpal Oilchem Pvt. Ltd. Palanpur PAN: AAACB8589Q (Appellant)	Vs	The ACIT, B.K. Circle, Palanpur (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.  
Assessee by: Shri Tushar Hemani &  
Shri P.B. Parmar, A.Rs.**

Date of hearing : 23-09-2019  
Date of pronouncement : 21-10-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2009-10, arises from order of the CIT(A)-I, Ahmedabad dated 28-04-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

*"1. In law and in the facts and circumstances of the appellant's case, the ld. CIT(A) erred in confirming disallowance of deduction u/s 80IB of the Act on the DEPB benefit and VKUY benefit without appreciating the fact that such benefits are derived from export of goods manufactured by appellant which is directly related to the business of it.*

2.1 In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in confirming disallowance made by Ld. Assessing Officer of Rs. 11,97,252/- (12% of Rs. 99,77,100) u/s Section 14A of the Act for the interest on money borrowed for investment made in Banpal Agro tech Pvt. Ltd. i.e. subsidiary company of the assessee. It may be deleted.

2.2 In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in upholding disallowance of interest U/s. 14A interest without appreciating the facts that the investment is from subsidiary company and for the purpose of business.

2.3 In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in upholding disallowance of interest U/s. 14A interest without appreciating the facts that the interest free own funds were far in excess of the funds invested in investments considered for disallowance u/s 14A.

2.4 In law and in the facts and circumstances of the appellants case, the id, CIT(A) erred in upholding disallowance of interest U/s. 14A interest without appreciating that no exempt income was earned during the year under consideration.

3. In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in confirming disallowance made by Ld. Assessing Officer on amount of Rs.15,88,600/- by considering the same as sales tax penalty whereas in fact the same is interest payable on regular purchase tax and is allowable business expenditure u/s 37(1) of the Act being laid out wholly and exclusively for the purposes of business. The Assessing Officer may be directed to delete the disallowance made.

4.1 In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in upholding peak of alleged unaccounted cash transactions for Rs. 90,95,190 without appreciating that same is already covered by disclosure of Rs. 2 crore made in A.Y. 2010-11.

4.2 In law and in the facts and circumstances of the appellant's case, the Id. CIT(A) erred in upholding peak of alleged unaccounted cash transactions considering peak computed at the end of each entry as against peak computed on daily balances. The Id. CIT(A) ought to have restricted peak addition to Rs. 31,83,719 as computed by A.O. in alternate working in Remand proceedings.

5. In law and in the facts and circumstances of the appellant's case, the Ld. CIT(A) has erred in not allowing deduction u/s 80IB on disallowance of peak, disallowance u/s 14A and disallowance of sales tax penalty."

3. The fact in brief is that return of income declaring income of Rs. 43,63,820/- was filed on 29<sup>th</sup> Sep, 2009. The case was subject to scrutiny assessment u/s. 143(3) of the act and order u/s. 143(3) passed on 16<sup>th</sup> December, 2011. The assessing officer has made multiple additions. The assessee has filed appeal on various additions which has been sustained by the Id. CIT(A). The remaining facts are discussed while adjudicating the different grounds of appeal of the assessee as under:-

Ground No. 1 (Confirming disallowance of Rs. 18,63,248/- u/s. 80IB of the act)

4. During the course of assessment, the assessing officer noticed that assessee has claimed deduction u/s. 80IB to the amount of Rs. 18,63,248/-. The assessing officer observed that the aforesaid deduction u/s. 80IB was claimed on the DEPB and NKUY benefits. The assessing officer has stated that as per the decision of Honøble Supreme Court in the case of Liberty India 317 ITR 218 deduction u/s. 80IB cannot be claimed on the DEPB

income, it has to be excluded while calculating the deduction u/s. 80IB of the act. Accordingly, the assessing officer has disallowed the claim of deduction u/s. 80IB on the aforesaid income. The assessee has filed appeal before the Id. CIT(A) and the Id. CIT(A) has dismissed the appeal of the assessee.

5. We have heard the rival contentions on this issue. We consider that the Honøble Supreme Court in the case of Liberty India vs. CIT 317 ITR 218 has held that DEPB benefits are on account of statutory provisions in custom act framed by the government therefore profit so derived do not form part of net profit of eligible industrial undertaking for purposes of section 80IB, 80I and 80IA. Therefore following the decision of Honøble Supreme Court as cited above, the assessee is not entitled to claim deduction u/s. 80IB of DEPB and VKUY benefits. Accordingly, we do not find any substance in this ground of appeal of the assessee and the same is dismissed.

Ground No. 2( Confirming disallowance of Rs. 11,97,252/- u/s. 14A of the act)

6. During the course of assessment, the assessing officer stated that assessee has made investment to the amount of Rs. 99,77,100/- in share capital of Banpal Agro Tech Pvt. Ltd. and also incurred interest expenses. The assessing officer has applied provision of section 14A and disallowed Rs. 11,97,252/- which was confirmed by the Id. CIT(A). During the course of appellate proceedings before us, the Id. counsel has brought to our notice that assessee has not earned any exempt income therefore the decision of Id. CIT(A) in sustaining the disallowance made u/s. 14A is not justified. On the

other hand ld. departmental representative could not contradict the facts reported by the ld. counsel.

7. We have heard both the sides and noticed that it is undisputed fact that assessee has not earned any exempt income during the year under consideration, therefore, after following the decision of Honøble Gujarat High Court in the case of CIT vs. Corrtch Energy Pvt. Ltd. 372 ITR 97 we consider that no disallowance u/s. 14A is to be made. Therefore, the appeal of the assessee on this issue is allowed.

Ground No. 3 (Confirming disallowance of Rs. 15,88,600/- u/s. 37 of the act)

8. During the course of assessment, the assessing officer made disallowance of Rs. 15,88,600/- on the ground that sale tax penalty was not allowable as business expenditure u/s. 37 of the act. The ld. CIT(A) has sustained the disallowance made by the assessing officer.

9. During the course of appellate proceedings before us, the ld. counsel contended that aassessee had paid interest of Rs. 15,88,600/- charged by the sales tax department as interest on purchase tax liability. The ld. counsel has also placed reliance on the decision of Prakash Cotton Mills Pvt. Ltd. vs. CIT (1993) 201 ITR 684 (SC) and Lachmandas Mathuradas Vs. CIT (2002) 254 ITR 799 (SC). On the other hand, ld. departmental representative has supported the order of ld. CIT(A).

10. We have heard the rival contentions and perused the material on record. With the assistance of ld. representatives, we have perused the page

no. 23 of the paper book containing the ledger account of Sale Tax Deferred Account demonstrating that on 22<sup>nd</sup> Sep, 2008, the assessee has credited an amount of Rs. 15,88,600/- as interest account late payment. The ld. counsel has also referred page no. 24 of the paper book as ledger of interest account showing including of interest account on account of late payment of Sales Tax. The ld. counsel has also referred page no. 17 of the paper book as Schedule XVI of interest & finance charges wherein interest amount has been debited by Rs. 16,49,274/- and page no. 23 as sales tax order. In the light of the above facts and circumstances, we find that assessee had paid interest on deferment of sale tax liability and the low lower authorities had failed to established that impugned amount was paid on account of levying of any penalty by the Sales Tax Deptt. Considering above, we are not inclined with the decision of ld. CIT(A), therefore, this ground of appeal of the assessee is allowed.

Ground No. 4 (Confirming addition of Rs. 90,95,190/-)

11. On this issue, during the course of appellate proceedings before us, ld. representatives have brought to our notice that ld. CIT(A) has given set off of the addition made in the next assessment year, therefore, after considering that, set off has been in the next year, we do not find any substance in this ground of appeal of the assessee and the same stands dismissed.

Ground No. 5

12. Since the ld. CIT(A) has allowed set off of peak in the next assessment year out of the 2 crore income disclosed by the assessee, therefore, this

ground of appeal of the assessee has become infructuous and the same is dismissed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 21-10-2019

Sd/-

(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad : Dated 21/10/2019

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
अहमदाबाद