

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1179/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2013-14

Amazon Textiles Pvt. Ltd., 105, Sakar-1, Nr. Nehru Bridge, Ashram Road, Ahmedabad-380006 PAN : AABCB 6914 E	Vs.	The Income-tax Officer, Ward 1(1)(4), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Biren Shah, AR
Revenue by :		Shri Mudit Nagpal, Sr DR

सुनवाई की तारीख/Date of Hearing : 24/09/2019

घोषणा की तारीख /Date of Pronouncement: 04/12/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

The present appeal is directed at the instance of the assessee against the order of learned Principal Commissioner of Income-tax-1, Ahmedabad [in short "the CIT"] dated 23.03.2018 passed under Section 263 of the Income-tax Act, 1961 for Assessment Year 2013-14.

2. The solitary grievance of the assessee is that the learned CIT has erred in taking cognizance under Section 263 of the Act and thereby setting aside the assessment order dated 21.03.2016.

3. The brief facts of the case are that the assessee has filed its return of income on 26.09.2013 declaring total income of Rs. Nil after claiming set off of carried forward business loss of Rs.1,75,02,151/- and unabsorbed depreciation of Rs.6,61,97,912/-. On scrutiny of the accounts, it revealed to

the Assessing Officer that the assessee has made investment of Rs.13,50,71,049/- in Adi Taxfab LLP. He confronted the assessee to demonstrate the expenses attributable to the earning of exempt income. In response to the query of the learned Assessing Officer, the assessee has filed a detailed written submission. The learned Assessing Officer, thereafter, worked out the disallowance required to be made under Section 14A r.w. Rule 8D of Income-tax Rules, 1962. The computation made by the Assessing Officer reads as under:-

“Thus, I proceed to compute the expenditure incurred in relation to earning dividend income as per the provisions of section 14A of the Act in the manner as prescribed under Rule 8D of the Act.

8.5 The working of disallowance u/s 14A r.w.r. 8D is as under:-

Rule 8D(2)(i)	
<i>The amount of expenditure directly relating to income which does not form part of total income</i>	0
Rule 8D(2)(ii)	
<i>Expenditure incurred by way of interest during the previous year which is not directly attributable to any particular income of receipt as per the formula namely:-</i>	
$A \times B/C$ <p>Where</p> <p>A = expenditure by way of interest other than amount of interest included in (i)</p> <p>B = average value of investment income from which does not form part of the total income</p> <p>C = average value of total assets as appearing in the Balance Sheet</p> <p>Here,</p> <p>A = = 90,03,976/-</p> <p>B = $\frac{135071049 + 120330349}{2}$ =12,77,00,699/-</p> <p>C = $\frac{625244621 + 755678236}{2}$ =69,04,61,428/-</p>	

$A \times B/C \quad \frac{9003976 + 127700699}{690461428}$	=16,65,284
Rule 8 D(2)(iii)	
<i>Half percent of the average value of investment income from which does not form part of the total income</i>	
$12,77,00,699 \quad \times 0.5 =$	= 6,38,503
Total	23,03,787

In view of the above, the disallowance u/s 14A r.w. Rule 8D is computed at Rs.23,03,787/-. (Disallowance of Rs.23,03,787/-)"

4. Dissatisfied with the disallowance of Rs.23,03,787/-, apart from other disallowances, the assessee carried the matter in appeal before the learned Commissioner of Income-tax (Appeals) [in short "the CIT(A)"]. The appeal was instituted on 15.04.2016 and it was decided on 27.04.2017. The learned CIT(A) has deleted the disallowance of Rs.23,03,787/-. Against the order of learned CIT(A), Revenue came up in appeal before the Tribunal vide ITA No. 1648/Ahd/2017. This appeal of the Revenue has been dismissed by the Tribunal vide order dated 19.06.2019 on the ground that the tax effect involved in the appeal by virtue of relief given by the learned CIT(A) is less than the monetary limit specified in the CBDT instruction bearing no.3 of 2018 dated 11.08.2018.

5. Learned CIT took cognizance under Section 263 of the Income-tax Act. A show-cause notice was issued on 08.11.2017. He was of the opinion that the learned Assessing Officer has taken net interest expenses while working out the disallowance as per the formula available in Rule 8D. This net interest expense has been worked out at Rs.90,03,976/-. According to learned CIT, the total interest expenditure of Rs.5,69,99,510/- ought to have been taken and thereafter formula should have been applied. In response to the show-cause notice, it was contended before him that only net interest

income has to be taken into consideration; but, somehow it was not accepted by the learned CIT; and, vide impugned order dated 23.03.2018, he has set aside the assessment order by observing as under:-

"In the instant case the AO while working out the disallowance u/s 14A had taken the interest expenditure of Rs.90,03,976/- instead of the interest expenditure shown at Rs.5,69,99,510/- in the P&L A/c. of the assessee.

Therefore, on facts of the case, the reply of the assessee is not acceptable so far as the error in computation of disallowance u/s 14A of the IT Act is concerned. In its reply dated 07.12.2018, the assessee had argued that the disallowance u/s 14A of the Act made by the AO was challenged before the CIT(A), Ahmedabad and worthy CIT(A) had allowed the appeal of the assessee and deleted the disallowance made by AO. Here it is to mention that against the said order of CIT(A), Ahmedabad, the revenue had preferred appeal before the ITAT not accepting the order of the CIT(A), Ahmedabad.

5.2 It has been observed that while finalizing the order u/s 143(3) of the IT Act dated 21.03.2016 the total assessed income was assessed at Rs. NIL after addition on various issued and after allowing set off of unabsorbed depreciation for AY 2008-09 of Rs.6,16,61,873/- and unabsorbed depreciation for AY 2009-10 of Rs.2,89,20,754/-. Further, it was noticed that while working out the disallowance u/s 14A r.w.r. 8D, the AO had taken Rs.90,03,976/- as interest expenditure whereas the correct amount is Rs.5,69,99,510/- as shown in the P&L account as on 31.03.2013. Thus the disallowances u/s 14A r.w.r. 8D is less worked out by Rs.88,76,618/- resulting into underassessment of MAT tax payable to Rs.24,15,375/- with interest as applicable.

6. In view of the above facts of the case, it is clear that the AO has failed to apply correctly the provisions of sec. 14A r.w.r. 8D of the IT Rules while computing the amount to be disallowed u/s 14A of the IT Act at the time of assessment. The manner in which scrutiny of the case has been carried out clearly shows that the order u/s 143(3) of the IT Act is erroneous and prejudicial to the interest of revenue. Therefore the provision of sec. 263 of the IT Act is clearly applicable in this case. Accordingly, provisions of sec. 263 of the IT Act are invoked and the said assessment is hereby set aside and the AO is directed to make fresh assessment in the right of the above discussion in accordance with law and after giving proper opportunity of being heard to the assessee."

6. Before us, learned Counsel for the assessee raised two fold submissions. In his first fold submission, he contended that sub-clause (c) of *Explanation 1* appended to Section 263 (1) contemplates that if an issue has been agitated in an appeal before the learned CIT(A), then the learned CIT has no jurisdiction under Section 263 of the Income-tax Act to entertain such issue. In the second fold submission, he contended that the Hon'ble jurisdictional High Court, vide its judgment dated 31.08.2017, in the case of Principal Commissioner of Income-tax Vs. Nirma Credit & Capital (P.) Ltd., reported in [2017] 85 taxmann.com 72 (Guj.), has laid down that for the purpose of considering the amount required to be disallowed under Section 14A and in the formula provided under Rule 8D, only net interest expenditure has to be taken into consideration. He placed on record copy of this judgment. He thereafter took us through page no. 19 of the assessment order, wherein learned Assessing Officer has noticed that the net interest expense of Rs.90,03,976/-. A perusal of these details would indicate that there was interest income of more than Rs.3.04 crores. The interest expenses related to unsecured loans were also worked out at Rs.3.94 crores. Thus, the net interest expense was worked out at Rs.90,03,976/-. The other expenses were for the business purposes and no connection with the investments. The learned CIT-DR, on the other hand, relied upon the order of the learned CIT.

7. We have duly considered the rival contentions and gone through the record carefully. Section 263 has a direct bearing on the controversy; therefore, it is pertinent to note sub-clause (c) of *Explanation 1* appended to Section 263(1) which reads as under:-

"263 (1).....

Explanation 1. – For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, –

.....
.....
.....

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

8. A perusal of the above explanation would indicate that the issues which have been taken into consideration by the First Appellate Authority, those issues cannot be considered under Section 263 of the Act. In the present case, even if after taking net interest expense, a disallowance of Rs.23,03,787/- was made which contains interest component as well as administrative expenses. According to learned CIT(A) this disallowance is not sustainable and, therefore, it has been deleted. The issue attained finality. Had a higher disallowance was required to be made, then that could have been made by the learned CIT(A) by issuing a notice for enhancement. If no disallowance is required to be made under Section 14A of the Act as held by the learned CIT(A), then can by entertaining issue under Section 263 some more amount be disallowed. Thus it is discernible that the same issue was agitated before the learned CIT(A) on which a higher amount could be disallowed. The learned CIT is not justified in taking action on this issue under Section 263 of the Act. Apart from this preliminary aspect on jurisdiction of the learned CIT, we find that the very basis for treating the assessment order as erroneous is not sustainable in view of the decision of Hon'ble Gujarat High Court in the case of Nirma Credit & Capital (P) Ltd (supra). The Hon'ble High Court has specifically laid down that only net interest expenses is to be considered in the formula for working out the disallowance required to be made under Section 14A of

the Act. This judgment was prior to the action taken by the learned CIT. It was available to him and should have been followed. If facts are being looked into in the light of this judgment, then it would reveal that the Assessing Officer has not committed any error which is required to be rectified by exercising powers under Section 263 of the Act. Therefore, on both counts, the order of the learned CIT is not sustainable. We thus allow the appeal of the assessee and quash the impugned order dated 23.03.2018 passed under Section 263 of the Act for Assessment Year 2013-14.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 4th December, 2019 at Ahmedabad.

Sd/-

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 04/12/2019

(RAJPAL YADAV)
JUDICIAL MEMBER

Signed T. S. P.S.

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.

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आदेशानुसार/ BY ORDER,

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