

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

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER And  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1658/Ahd/2018  
(निर्धारण वर्ष / Assessment Year : 2012-13)

Shravankumar Gisulal Jain 76, Royal Acre B/h. Billabong International School Vadsar Road, Vadodara	<u>बनाम/</u> Vs.	The Income Tax officer Ward-1(2)(5) Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABMPJ 2945 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Ankit Chokshi, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri G.c. Daxini, Sr.DR

सुनवाई की तारीख / Date of Hearing	02/03/2020
घोषणा की तारीख /Date of Pronouncement	02/03/2020

आदेश / O R D E R

**PER SHRI SANDEEP GOSAIN, JUDICIAL MEMBER :**

The Assessee is in appeal before us against the order of Ld.Commissioner of Income Tax(Appeals)-5, Vadodara ['CIT(A)' in short] dated 17/05/2018 passed for Assessment Year (AY) 2012-13.

2. The solitary grievance of the assessee is that the Ld. CIT(A) erred in disallowing the total interest expenditure of Rs.10,40,977/- made by the



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Assessing Officer u/s.14A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. Brief facts of the case are that assessee has filed his return of income on 31/07/2012 declaring total income of Rs.NIL. The case was picked up for scrutiny and after serving statutory notice and seeking reply of the assessee, Assessing Officer noticed that assessee had borrowed money from various parties and interest thereof Rs.10,47,877/- and thus made disallowance u/s.14A of the Act.

4. Aggrieved by the order of the AO, assessee preferred an appeal before Ld.CIT(A), who after considering the case of both the parties, dismissed the appeal filed by the assessee.

5. Aggrieved by the order of the Id.CIT(A), now the assessee is further in appeal before us.

6. The solitary ground raised by the assessee relates to challenging the order of Id.CIT(A) in upholding the order of Assessing Officer while disallowing the interest expenses of Rs.10,47,877/- u/s.14A of the Act.

7. The Ld.AR appearing on behalf of assessee reiterated same arguments as were raised by him before CIT(A) and had also relied upon



the written submissions submitted before us and the same is reproduced hereunder:

*" “Undisputedly interest expenditure was incurred for earning profit from the firms. The Hon'ble Special Bench of IT AT in the case of Vishnu Anand Mahajan Vs ACIT (2012) 137 ITD 189 (Ahd)(SB) has held that share income of the partner from partnership firms is not liable to be taxed u/s. 10(2A) and in such cases, provisions of Section 14A would apply to disallow expenditure incurred on earning such income. Accordingly, relying upon the binding decision of Hon'ble Special Bench of I TAT, I hold that the appellant is not entitled to claim interest expenditure incurred for earning exempt income from partnership firms. In view of the decision of Hon'ble Special Bench being the latest one has to be considered instead of decisions relied by the Ld. AR. Accordingly, the disallowance made by the AO is confirmed and both the grounds of appeal are dismissed.”*

*Therefore your appellant preferred appeal before the Hon'ble ITA r on following grounds*

*"On the law and facts of the case of your appellant, the Ld. A.O. has erred in disallowing the total interest expenditure of Rs. 10,40,877/- u/s 14A of the Income Tax Act, 1961"*

*1. Facts In Brief*

- 1.1. Your appellant is an Individual and regularly assessed to Tax at Vadodara. For the Asst. year 2012-13, your appellant had filed his return of income on 31.07.2012 declaring loss of Rs. 85,299/- and claimed refund of Rs. 33,000/-*
- 1.2. The return of income of your appellant consists of income from Salary, capital gain and income from other sources. Copy of acknowledgement of return of income along with statement of income is enclosed herewith at page no. 06 to 08.*
- 1.3. During the assessment proceedings, the Ld. A.O. called for the details of the interest expenses of Rs. 10,40,877/- claimed under the head income from other sources.*



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- 1.4. *In response to the same, the appellant submitted to the Ld. A.O. the details of interest expenses like ledgers of parties from whom unsecured loans were taken, copy of confirmations of parties etc.*
- 1.5. *It was also submitted to the Ld. A.O. that the interest expenses paid were towards unsecured loans taken for investment towards capital in partnership firms namely Sandeep Enterprise, Gajanand Enterprise and Vallabh Enterprise. Copies of capital account of the appellant in the partnership firms were duly furnished to the Ld. A.O. and filed the revised statement of income considering interest received from partnership firm as income from business and profession and also claimed interest expenses under the head income from business and profession. Copy of revised statement of income is enclosed herewith at page no. 09 to 11*
- 1.6. *However the Ld. A.O. after considering the revised statement of income, disallowed the interest expenses u/s. 14A as the interest expenses claimed by the appellant under the head income from business or profession are for earning exempt income and therefore not allowable deduction*
- 1.7. *Therefore your appellant filed appeal before the Ld. CIT(A)-5, Vadodara against the order of the Ld. A.O, who confirmed that the undisputedly interest expenditure of Rs. 10,40,877/- was incurred for earning profit from firms and therefore in view of decision of the SB of Ahmedabad IT AT in the case of Vishnu Anand Mahajan Vs ACIT disallowed the same u/s. 14A of the Act*
- 1.8. *Therefore your appellant preferred the appeal before the Honourable Tribunal on the ground mentioned above*
2. *Submission of the Appellant*
  - 2.1. *The Ld. CIT(A) has disallowed the interest expenses incurred on loans taken for investing in Partnership firms as capital of the appellant.*
  - 2.2. *The Ld. CIT(A) has disallowed the interest expense in **view** of decision of the Hon'ble SB of Ahmedabad IT AT in the case of Vishnu Anand Mahajan Vs ACIT*
  - 2.3. *In this regard, it is humbly submitted that the facts of the decision applied by the Ld. CIT(A) and facts of the case of your appellant are different*



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- 2.4. *In the case followed by the Lti. CIT(A), the assessee had earned the exempt income while in the present case, the appellant had not earned any exempt income.*
- 2.5. *It is further submitted that even if the said decision of the Hon'ble SB of Ahmedabad Tribunal is applied to the case of your appellant, no disallowance could be made u/s. 14A of the Act as the Hon'ble Special Bench has upheld the order of the CIT(A) disallowing only 76% of expenses claimed proportionate to the exempt income and allowed the 24% of the expenses proportionate to the taxable income. While in the present case of your appellant, even if the ratio of the decision of the Hon'ble Special Bench is applied no deduction would be made as the appellant had not received any exempt income and accordingly expense proportionate to the exempt income will come to NIL only.*
- 2.6. *Further your appellant is submitting herewith the gist of decision of various courts and tribunals where it is held by the honourable courts and tribunals that disallowance u/s. 14A cannot be more than the exempt income*
1. *Pr. CIT Vs. GVK Projects and Technical Services Ltd. [2019] 106 taxmann.com 181 (SC)*
  2. *Cheminvest Ltd. Vs. CIT [2015] 61 taxmann.com 116/223 Taxman 761(Delhi)*
  3. *CIT v. Corrttech Energy (P.) Ltd. [2014] 45 taxmann.com 116/223 Taxman 130 (Guj)*
  4. *Pr. CIT Vs. Macdonald's India Pvt. Ltd. [2019] 101 taxmann.com 86 (Delhi)*
  5. *PCIT Vs Keshav Power Ltd. (2019) 112 Taxmann.com 324 (SC)*
  6. *CIT Vs. Taikisha Engineering India Ltd. [2015] 229 Taxman 143 (Delhi)*
- 2.7. *In the case of Pr. CIT Vs GVK Projects and Technical Services Ltd. (2019) 106 Taxmann.com 181 (SC), the Hon'ble Supreme Court dismissed the SLP filed against the order of the Delhi High Court where the Hon'ble Delhi High Court following the ruling in Cheminvest Ltd. Vs. CIT [2015] 61 taxmann.com 118/378 ITR 33 (Delhi); had held that in the absence of any exempt income disallowance was impermissible and upheld the order of the Delhi Tribunal*



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2.8. In the case of *Cheminvest Ltd. Vs. CIT* [2015] 61 taxmann.com 116/223 Taxman 761 (Delhi), it was held that Section 14A of the Income Tax Act 1961 envisages that there should be an actual receipt of income which is not includible in total income. Therefore, Section 14A will not apply where no exempt income is received or receivable during relevant previous year.

2.9. In the case of *CIT v. Corrttech Energy (P.) Ltd.* [2014] 45 taxmann.com 116 and 372 ITR 97, (Guj), the Hon'ble Gujarat High Court following the decision of division bench of Punjab and Haryana High Court in the case of *CIT v. Winsome Textile Industries Ltd.* [2009] 319 ITR 204 held that Section 14A(1) provides that for the purpose of computing total income under chapter IV, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the instant case, the Tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the Tribunal held that disallowance under section 14A could not be made.

2.10. In *Pr.CIT Vs. Macdonald's India Pvt. Ltd.* [2019] 101 taxmann.com 86 (Delhi), The A.O. noticed investments in assessee's books and invoked Section 14A. Assessee contended that it had not earned any exempt income during the year. It was held that as the assessee had not earned any exempt income during the year, therefore, no disallowance could be made u/s 14A.

2.11. Your appellant is submitting herewith the copies of capital accounts in the partnership firms and copies of return of income along with statement of income of the partnership firm where it can be seen that the appellant has not received any share of profit from partnership firms for the Asst. Year 2012-13. Your appellant is submitting herewith the copies of the same at page no. 12 to 21.

2.12. Therefore during the financial year 2011-12 relevant to Asst Year 2012-13, your appellant has not received any share of profit from the firms and therefore not received any exempt income at all

2.13. Therefore on the basis of above submission and gist of decisions reported, no disallowance could be made u/s. 14A of the Act and therefore your appellant prays the Hon'ble member to allow the appeal of your appellant and delete the disallowance made by the Ld. A.O.”



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8. On the other hand, Ld.DR relied upon the orders of the authorities below.

9. We have heard the Learned Representatives for both the parties. We have also perused the material placed on record, judgements cited by the parties as well as the orders passed by the revenue authorities. At the outset, Ld.AR drawn our attention to the fact that the assessee has not earned any exempt income as stated by the Assessing Officer in his order from the firm and, therefore, in such circumstances, no disallowance was required to be made as per the provisions of section 14A of the Act. In this regard, Ld.AR relied upon the decision of Hon'ble Gujarat High Court in the case of CIT vs. Corrttech Energy (P.)Ltd. reported in (2014) 45 taxmann.com 116/223 Taxman 761(Delhi). On the contrary, Ld.DR relied upon CBDT Circular No.5/2014 dated 11<sup>th</sup> February-2014 and decision of ITAT Amritsar in the case of Lally Motors India (P.)Ltd. vs. Pr.CIT passed in ITA No.218(Asr)/2017 for AY 2012-13, dated 12/04/2018.

9.1. After having gone through the facts of the present case and also having taken into consideration the legal proposition as mentioned in the written submissions of Ld.AR and that of Ld.DR, we find that various Courts as well as Tribunals have taken a consistent view that when



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assessee has not made any claim for exemption of any income from the payment of tax, therefore, there cannot be any disallowance u/s.14A of the Act. In this respect, we also relied upon the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. CIT (2015) reported in (2015) 61 taxmann.com 116 / 223 Taxman 761 (Delhi) wherein it was held that section 14A of the Act envisages that there should be an actual receipt of income which is not includible in total income. Since in the present case also, the assessee has not made any claim for exemption of any income from payment of tax, therefore while relying upon the decision(s) in the case of Cheminvest Ltd. vs. CIT(supra) and CIT vs. Corrtch Energy (P.) Ltd.(supra), we are also of the view that no disallowance u/s.14A of the Act ought to have been made by the Ld.AO. Therefore, we set aside the order of the Id.CIT(A) and allow the ground of appeal raised by the assessee.

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

**Order pronounced in the Court on 02-03-2020 at Ahmedabad**

Sd/-  
( AMARJIT SINGH )  
ACCOUNTANT MEMBER

Sd/-  
( SANDEEP GOSAIN )  
JUDICIAL MEMBER

Ahmedabad; Dated 02/ 03 /2020  
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS





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**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, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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सत्यापित प्रति //True Copy//

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