

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD
[Through Virtual Court]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA.No.2110/Ahd/2018
निर्धारण वर्ष/Asstt.Year : 2015-16**

The DCIT, Cir.2(1)(2) Ahmedabad.	Vs.	Mas Financial Services Ltd. 6, Ground Floor, Narayan Chambers B/h. Patan Hotel Ashram Road Ahmedabad 380 006. PAN : AABCM 0640 A
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri S.S. Shukla, Sr.DR
Assessee by :	None

सुनवाई की तारीख/Date of Hearing : 11/02/2021

घोषणा की तारीख /Date of Pronouncement: 12/02/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 18.7.2018 passed for the Asstt.Year 2015-16, vide which, the Id.CIT(A) has restricted the disallowance under section 14A of the Income Tax Act, 1961.

2. None appeared on behalf of the assessee. Therefore, we proceeded to dispose of the appeal *ex parte qua* the assessee-respondent, after hearing the Id.DR and considering the material available on record.

3. Brief facts of the case are that assessee is non-banking finance company engaged financing loans and advance and other ancillary activities. It has filed return of income on 26.9.2015 declaring total income at Rs.60,29,81,830/-. The case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) of the Act. During the assessment proceedings, it was noticed by the AO that the assessee has declared dividend income of Rs.4,87,675/-, which was claimed as exempt income under section 10(35) of the Income Tax Act, 1961, but no expenses has been disallowed to claim such exempted income. The Id.AO also noticed that the assessee was having investment of Rs.11,09,94,334/- and also claimed interest expenditure to the tune of Rs.99,13,34,126/- on borrowed funds. The Id.AO therefore construed that investment made in shares, out of which exempt income was claimed, would be from the interest bearing borrowed funds. To the show cause notice, it was explained by the assessee that the assessee has interest free fund of Rs.103,53,86,985/- in the form of shares capital and reserves & surplus against investment of Rs.11,09,94,334/-, therefore, assessee had sufficient interest free fund to make investment. Further, during the accounting year 2014-15, the interest income was Rs.206,09,45,858/- against which interest expense was Rs.99,13,34,126/-, therefore, net interest income was Rs.106,96,11,732/-, which 2.08 times more than the last year. It was further submitted that out of total investment, 96.85% investment was made in the subsidiary company as a strategic investment, and the main object of the subsidiary was for financing housing project. An amount of Rs.4,87,675/- was received as dividend from the subsidiary, which would not attract provisions of section 14A of the Act. It was also submitted that in any case the disallowance could not be exceeded more than the exempt income, as propounded in various authoritative judgments, and that similar claim for earlier years were accepted by the

Department. The explanation of the assessee has not been found satisfactory by the AO, and he has observed that explanation given by the assessee was general and no details showing fund flow has been submitted to substantiate its claim, and therefore, it was a case of diversion of interest bearing funds by the assessee for non-business purpose. He, accordingly, made disallowance of Rs.90,55,252/- with the help of Section 14A r.w. rule 8D.

4. Dissatisfied with order of the AO, the assessee went in appeal before the Id.first appellate authority. The Id.CIT(A) has allowed claim of the assessee on the basis of earlier appellate order for the Asst.Year 2014-15, and held that disallowance of the expenses should not be more than the exempt income earned by the assessee. Aggrieved by the action of the Id.CIT(A), Revenue is now before the Tribunal.

5. We heard the Id.DR on the issue, and gone through the material on record. Without going into any other details, we find that a perusal of the impugned order would reveal that the assessee has dividend income of Rs.4,87,675/-. The Id.AO has worked the disallowance under section 14A at Rs.90,55,252/- which included interest expenses required to be allocated under section 14A read with Rule 8D. However, on appeal, the Id.CIT(A) has restricted this disallowance to Rs.4,87,675/-. The finding of the Id.CIT(A) on this aspect reads as under:

“3.10. In view of the aforesaid discussion and following the decision given by CIT(A) - 2, Ahmedabad in preceding year i.e. A. Y. 2014-15, the disallowance made by the AO with regard to the administrative and expenditures being 0.5% of the average investments invoking the Rule 8D(2)(iii) is confirmed to the extent of dividend income which is Rs.4,87,675/-. In other words, the disallowance under section 14A amounting to Rs.90,55,252/- is restricted to Rs. 4,87,675/-. Relief is granted for the balance disallowance.”

6. It is pertinent to observe that issue in dispute is squarely covered by the decision of Hon'ble jurisdictional high Court in the case of CIT Vs. Corrttech Energy Ltd., 372 ITR 97 (Guj) wherein it was held that maximum disallowance under section 14A could be made equivalent to exempt income earned by the assessee in the absence of any expenses being incurred to earn such income. Therefore, in the present case, disallowance cannot exceed the dividend income earned by the assessee. Considering this proposition, the Id.CIT(A) has already restricted the disallowance to Rs.4,87,675/-, hence, no interference is called for on this issue. This ground is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 12th February, 2021 at Ahmedabad.

Sd/-
(PRADIPKUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT