

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 2332 to 2334/AHD/2018

निर्धारण वर्ष/Asstt. Years: (2013-2014 to 2015-2016)

D.C.I.T., Circle-4(1)(1), Ahmedabad.	Vs.	Sal Care Pvt. Ltd., C/o Sal Hospital & Medical Institute, Opp. Doordarshan, Drive-in-Road, Ahmedabad. PAN: ALCS7886G
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(Applicant)		(Respondent)
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Revenue by :	Shri L.P. Jain, Sr.D.R
Assessee by :	Shri S.N. Soparkar, Sr. Advocate with Ms Urvashi Shodhan, A.R

सुनवाई की तारीख / **Date of Hearing** : **20/01/2021**
घोषणा की तारीख / **Date of Pronouncement**: **08/04/2021**

आदेश / O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

These three appeals have been preferred by the Revenue against the appellate orders of the Learned Commissioner of Income-Tax (Appeals), Ahmedabad ["Ld.CIT(A)" in short] relevant to Assessment Years 2013-14, 2014-15, 2010-11 and 2015-16. All these appeals pertains to the same assessee and there are common issues therefore for the same of brevity we would like to dispose the said appeals by this common order.

2. First we take ITA No.2332/Ahd/2018 for A.Y. 2013-14 as the lead case for the purpose of adjudication. The Revenue has raised the following grounds of appeal:

1. *That the Ld.CIT(A) has erred in law and on the facts in deleting the addition made on account of disallowance of Management charges of Rs.,62,00,000/- u/s.40A(2)(b) of the I.T Act, 1961.*
2. *That the Ld.CIT(A) has erred in law and on the facts in deleting the addition made on account of disallowance of Rs.16,66,022/- u/s.14A r.w.r.8D of the I.T Act, 1961.*

3. The facts of this case are that assessee is in the business of providing Medical Health facilities. During the course of assessment proceedings it was noticed by the AO that the assessee has paid an amount of Rs.1,62,00,000/- to Adarsh Foundation towards Management Charges. It is also seen that this payment is covered u/s.40A(2)(b) of the Act, as the father of one of the Director of the assessee company is the Managing Trustee of the said foundation. In reply to the notice the assessee stated that assessee has paid the amount not for acquisition but it was made for the payment of goodwill and the right of the Sal Hospital running by the payee. As per the clause no.4 of the agreement the assessee has undertaken to pay a minimum sum irrespective of revenue generated or loss incurred by SAL Hospital under the management of the assessee or a sum calculated at specified percentage with reference to the profit as per accounts to be paid every year during the year of operation of the agreement. However, the same was used for goodwill and using brand "SAL Hospital"

4. Ld.AO considering the submission and mentioned in his order that Adarsh Foundation is a Charitable Organization with a social service as one of its objective and foundation is not for profit earning organization. The payment of Rs.1,62,00,000/- made to this Charitable Organization, especially in the light of goodwill, is not justified and Ld.AO was of the opinion that it was a business transaction to encash the goodwill or the market brand name to attract patients to the assessee company. As per the norms of Medical Ethics it is not permissible and

held that in this case the assessee has developed such colourable device, that the assessee company and Adarsh Foundation share profit even before making the payment of income-tax on such profit. This is nothing but a well planned story carved out to evade tax, moreover no TDS has been deducted and Ld.AO held that Rs.1,62,00,000/- paid to Adarsh foundation in the name of management charges are covered u/s.40A(2)(b) of the Act is not allowed as business expenditure incurred by the assessee during the course of running his business.

4.1 The Ld.AO also made an addition of Rs.16,66,022/- u/s.14A of the Act and he mentioned that assessee has earned exempt income of Rs.3,40,000/- in the form of dividend but assessee has not disallowed any expenditure u/s.14A of the Act and applied Rule 8D as follows:

(iii) An Amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

From the submissions made, it is evident that as regards

(i) There is no amount of expenditure which directly relates to the income not forming part of total income.

(ii) $A = 44,80,736/- (44,60,548 + 20,188)$

$B = \frac{8,05,54,380 + 16,64,57,862}{2}$

$= 12,35,06,121$

$C = \frac{46,73,20,905 + 56,96,38,990/-}{2}$

$= 52,84,79,948$

*Therefore, $A*B/C = 10,48,492$*

(iii) $\frac{1}{2}$ % of B, above, comes to Rs.6,17,530/-

Therefore, as per the above calculation, the total disallowance to be made u/s.14A comes to Rs.16,66,022/- (Rs.NIL + Rs.10,48,492 + Rs.6,17,530). Since the assessee has not made any disallowance u/s.14A of the Act, despite having earned income not forming part of the total income, an amount of Rs.16,66,022/- is added to the total income of the assessee.

5. Against the order of the Ld.AO the assessee preferred an first statutory appeal before the Ld.CIT(A)

6. "Ld.CIT (A)" allowed this ground of appeal of the assessee holding that similar issue was raised by the "Ld.AO" in the assessee own case in the Assessment Year 2009-10 but was not approved by "Ld.CIT (A)" and thereafter Hon'ble ITAT in ITA No.1518/Ahd/2012 for A.Y. 2009-10 and ITA No.1811/Ahd/2015 for A.Y. 2011-12 wherein the ITAT held that provision of section 40(a)(ia) of the Act are not applicable in the case of the assessee and on the base of the consistency matter was decided in favour of the assessee.

7. Thus, in parity with the ITAT orders in ITA no.1518/Ahd/2012 for A.Y. 2009-10 and ITA No.1811/Ahd/2015 for A.Y. 2011-12, we dismiss the ground of appeal. In the result, this ground of appeal of the revenue is **dismissed**.

8. Now we come to the next ground of appeal of the revenue relating to disallowance of Rs.16,66,022/- u/s.14A r.w.r. 8D of the I.T Act,1961.

9. In this case the assessee is having huge interest free funds for making investments and there being no nexus of the borrowed funds and investments made the disallowance was interest expenses cannot be made. However, assessee had taken alternate plea that the total exempt income earned during the year is only Rs.3,40,000/- hence disallowance u/s. 14A cannot exceeds this sum.

10. "Ld.CIT (A)" considering the judgment of Jurisdictional High Court in the matter of CIT vs Corrtch Energy P. Ltd. (2014) 223 Taxmann 130(Gujarat) wherein it is held that disallowance cannot be morethen exempt income. Thus, in our considered opinion order of the "Ld.CIT (A)" does not required any kind of interference at our end. He has passed the detailed and reasoned order therefore this ground of revenue is **dismissed**.

11. Coming to the ITA No.2333/Ahd/2018 for A.Y. 2014-15. The revenue has raised the following grounds of appeal:

- 1) *That the "Ld.CIT (A)" has erred in law and on facts in deleting the addition made on account of disallowance of Management Charges of Rs.2,59,00,000/- u/s.40A(2)(b) of the I.T. Act, 1961.*
- 2) *That the "Ld.CIT (A)" has erred in law and on the facts in deleting the addition made on account of disallowance of Rs.38,39,889/- u/s.14A r.w.r.8D of the I.T Act, 1961.*

12. In connected to ITA No.2332/Ahd/2018 for A.Y.2013-14, similar grounds has been raised in assessee's own case in appeal filed by the revenue wherein we have dismissed this ground of appeal. Thus, in parity with the above said order we **dismissed** this ground of appeal of revenue.

13. Now, we come to the next ground of revenue relating to disallowance of Rs.38,39,889/- u/s.14A r.w.r. 8D of the Act.

14. In similar facts and circumstances in connected appeal, the appeal of the revenue was dismissed by us and in this case exempt income of assessee is Rs.20,34,550/- therefore we restrict the addition of Rs.20,34,550/-. In the result this ground of appeal of revenue is **dismissed**.

15. Now coming to the ITA No.2334/Ahd/2018 for A.Y. 2015-16. The revenue has raised the following ground of appeal:

- 1) *That the "Ld.CIT (A)" has erred in law and on the facts in deleting the addition made on account of disallowance of Management Charges of Rs.2,38,00,000/- u/s.40A(2)(b) of the I.T Act, 1961.*

16. In connected to ITA no.2332/Ahd/2018 and ITA No.2333/Ahd/2018 for A.Ys 2013-14 and 2014-15, we have dismissed the grounds of appeal of the revenue on

similar facts and circumstances. Thus, in parity with the above said order this ground of revenue is **dismissed**.

17. In the comon results, all the appeals filed by the Revenue are **dismissed**.

Order pronounced in the Court on 08/04/2021 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

Ahmedabad; Dated **(True Copy)**
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