

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1006/Del/2017
(ASSESSMENT YEAR 2009-10)**

M/s Krishak Bharati Cooperative Ltd., A-60, Kailash Colony, New Delhi-110 048 PAN-AAA AK 0203G (Appellant)	Vs.	Asst. CIT, Circle-30(1), New Delhi. (Respondent)
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**ITA No.1469/Del/2017
(ASSESSMENT YEAR 2009-10)**

Asst. CIT, Circle-30(1), New Delhi (Appellant)	Vs.	M/s Krishak Bharati Cooperative Ltd., A-60, Kailash Colony, New Delhi-110 048 PAN-AAA AK 0203G (Respondent)
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Appellant By	Sh. K.V.S.R Krishna, CA
Respondent by	Sh. Vipul Kashyap, Sr. DR
Date of Hearing	16.06.2021
Date of Pronouncement	13.09.2021

ORDER**PER SUDHANSHU SRIVASTAVA, JM:**

ITA No.1006/Del/2017 is the assessee's appeal against order dated 28.12.2016 passed by the the Learned Commissioner of Income Tax (Appeals)-10, New Delhi {CIT(A)} for Assessment Year 2009-10 whereas ITA No.1469/Del/2017 is the Department's Cross Appeal for the same year.

2.0 The brief facts of the case are that the assessee is a Co-operative Society and it comes under the administrative control of Department of Fertilizers, under Government of India. The assessee is engaged in the manufacturing of various types of fertilizers. The return of income was filed returning an income of Rs.2,46,76,43,880/-. The case was initially processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') and was later selected for scrutiny. During the course of assessment proceedings, the Assessing Officer (AO) observed that an amount of Rs.23,09,967/- had been claimed on account of amortization of lease hold land. Since, disallowance on this account had been made

in earlier Assessment Years viz. 2005-06, 2006-07 & 2007-08 also on identical facts, this amount was disallowed in the current year also. Apart from this, the Assessing Officer also made a disallowance of Rs.8,36,46,815/- u/s 14A of the Act and the assessment was completed at income of Rs.25,53,60,060/-.

2.1 Aggrieved, the assessee preferred appeal before the Ld. First Appellate Authority, who partly allowed the appeal of the assessee by restricting the disallowance made u/s 14A of the Act to Rs.50,53,792/- thereby giving the relief of Rs.7,85,93,023/- out of the total disallowance made by the Assessing Officer to the tune of Rs.8,36,46,815/-. Further, the Ld. CIT(A) upheld the addition of Rs.23,09,967/- with respect to the lease hold payments made by the assessee society.

2.2 Now, both the assessee as well as the Department have approached this Tribunal and have raised the following grounds of appeal:

Grounds of appeal in ITA No.1006/Del/2017 (Assessee's Appeal)

- 1. The Id. CIT(A) erred in law and on facts in confirming the disallowance of Rs.23,09,967/- being amortization of lease payment. These are allowable business expenditure for determining the taxable income and should have been allowed.*
- 2. The appellant contends that amortization of these expenses over the period of the lease is revenue expenditure and is in the nature of rent paid for the use of land. It is not in the nature of capital expenditure as the assessee does not get any legal title or any right over the land.*
- 3. The Id. CIT(A) has erred in law and on facts in confirming the disallowance of Rs.50,53,792/- u/s 14A r.w.r. 8D of the Income Tax Rule 1962. The disallowance is wrong and bad in law and should be deleted.*
- 4. The Id. CIT(A) has failed to appreciate that the AO has not brought on record any material to show nexus between expenditure and earning of exempt income. No disallowance u/s 14A r.w.r. 8D can be made.*
- 5. The CIT(A) has failed to appreciate that Rule 8D can be invoked only when the A.O. from the books of accounts is able to demonstrate that some expenditure has been incurred for earning tax free income. Rule 8D has been mechanically invoked by A.O. without establishing such nexus. Consequently, the disallowance u/s 14A r.w.r. 8D of Rs.50,53,792/- should be deleted.*
- 6. The above grounds are independent and without prejudice to one and another.”*

Grounds of appeal in ITA No.1469/Del/2017 (Department's Appeal)

1. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowance of Rs.8,36,46,815/- made by the AO u/s 14A to Rs.50,53,792/- thereby giving relief of Rs.7,85,93,023/- by observing that no disallowance of expenditure can be made u/s 14A, if investments made by the assessee do not yield any tax free income in the previous year.”*

2. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has contradicted himself in as much as on one hand he says that no disallowance can be made u/s 14A if the investments made by the assessee do not yield any tax free income in the previous year, however, on the other hand he says that the assessee had tax free income in the form of dividend of Rs.2,43,75,000/-, which has been claimed as exempt u/s 10(34) of the IT Act. Despite the above contradiction the Ld. CIT(A) has grossly erred in restricting the disallowance of Rs.8,36,46,815/- made by the AO u/s 14A to Rs.50,53,792/- only.”*

3. *“On the facts and in the circumstances of the case, the Ld CIT(A) has erred in not appreciating the fact that as per rule 8D(2) of the Income Tax Rules, the average value of investments, income from which does not or shall not form part of total income, as appearing in the Balance Sheet of the assessee, on the 1st day and the last day of the previous year, should be taken while computing the amount of disallowance.”*

4. *“On the facts and in the circumstances of the case, the Ld CIT(A) has erred in excluding the investments in Nagarjuna Fertilizers and Chemicals Ltd, Kribhco Shyam Fertilizers Co. Ltd., Uravarak Videsh Limited, which did not yield income in the year under consideration, for arriving at average value of investments for the purpose of disallowance u/s 14A read with Rule 8D(2) of the Income Tax Rules, 1962.”*

5. *“The Appellant reserves the right to raise any further and additional grounds of appeal at the item of hearing oral arguments including reliance on additional case laws.”*

6. *“The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”*

It is prayed that the order of the Ld. CIT (A)-10, New Delhi being contrary to the facts on record and the settled position of law, be set aside and that of the Assessing Officer be restored.”

3.0 The Ld. Authorized Representative (AR) submitted that as far as issue of disallowance u/s 14A read with Rule-8D of the Income Tax Rules, 1962 was concerned, the Ld. CIT(A) had incorrectly computed the relief to be allowed to the assessee in this regard. He drew our attention to the list of investments held/made by the company during the year under consideration and as reproduced in pages, 16,17 & 18 of the First Appellate Order. Our

attention was drawn to investment bearing Serial No.4 in the table reproduced in the order of the Ld. CIT(A) as aforesaid and it was submitted that this pertained to Equity Investment in Gujrat State Energy Generation Ltd. and an amount of Rs.2,43,75,000/- had been received as dividend during the year under consideration. It was submitted that this was the only investment which had yielded dividend which was tax free and, therefore, only this investment has to be considered for the purpose of computation of disallowance u/s 14A of the Act. The Ld. AR relied on the judgments of the Hon'ble Delhi High Court in the case of ACB India Ltd. vs. ACIT and Cheminvest Ltd. vs. CIT and numerous other judicial precedents and argued that the investment which do not yield tax free income are not be considered for the purpose of the disallowance and consequently no investment which could not yield any tax free income should form part of the Rule-8D computation. The Ld. AR referred to the relevant pages of the order of the Ld. CIT(A) wherein in Para 4.2.9, the Ld. CIT(A) has accepted this plea of the assessee that no disallowance of expenditure can be made u/s 14A where there is no exempt income earned by the assessee and also that

disallowance under Rule-8D will have to be made in respect of investments yielding tax free income only during the assessment year. The Ld. AR also submitted that although the Ld. CIT(A) had accepted the assessee's contention in principle and had allowed relief in this regard but he had, while restricting the disallowance to Rs.30,37,500/- in page 40 of the appellate order had erred in recording the finding as restricting the disallowance to Rs.50,53,792/-. It was submitted that this was a mistake which was very much apparent from the order of the Ld. CIT(A) itself. The Ld. AR also further argued that the Ld. CIT(A) had included the disallowance on account of interest expenditure also although the assessee had interest free reserves available with it to make the investment in the equity of the Gujrat State Energy Generation Ltd. and, therefore, the disallowance sustained by the Ld. CIT(A) was erroneous on this count also.

3.1 With respect to the assessee's other grievance regarding amortization of lease payment, the Ld. AR submitted that during the year under consideration the assessee had claimed amortization

of lease rent amounting to Rs.23,09,967/- and since similar disallowance had been made in Assessment Years 2005-06, 2006-07, 2007-08, the Assessing Officer proceeded to disallow the same in this year also. The Ld. AR fairly accepted that the Hon'ble Delhi High Court had also dismissed the assessee's appeal on the issue. The Ld. AR argued that although the Hon'ble Delhi High Court had held against the assessee, the assessee had submitted some additional information which should have been considered before deciding the issue against the assessee. It was submitted that additional information had been made available by the assessee in respect of market rate which the assessee would have otherwise paid, had it not been acquiring the land on lease and used the same for the purpose of office building. The Ld. AR prayed that this issue may be restored to the Assessing Officer for the purpose of de novo examination after duly considering the additional information to be provided by the assessee in this regard.

4.0 Per contra, the Ld. Sr. DR, on the issue of disallowance u/s 14A of the Act relied on order of the Assessing Officer and on the

issue of amortization of lease rent, the Ld. Sr. DR had no objection if the issue was restored to the file of the Assessing Officer.

5.0 We have heard the rival submissions and have also perused the material on record. As far as the issue of disallowance u/s 14A is concerned, we note that both the parties have preferred cross appeals on the issue. While the assessee has challenged the sustenance of disallowance by the Ld. CIT(A), the Department has challenged the deletion made by the Ld. CIT(A). We have perused the order passed by the Ld. First Appellate Authority and we note that in page 40 of his order, the disallowance has been computed at Rs.30,37,500/- but while recording a finding of the same, he has restricted the disallowance to Rs.50,53,792/-. This is an apparent mistake and the same needs rectification. The assessee has also objected to the inclusion of the interest portion while computing the disallowance u/s 14A on the ground that the assessee had free reserves to make investments in the equity of the Gujrat State Energy Generation Ltd. Therefore, this issue would necessarily require verification by the Assessing Officer. As far as the

Department's challenge to the deletion of disallowance by the Ld. CIT(A) is concerned, we note that the Ld. CIT(A) has given a very categorical finding that it was only the assessee's investment in Gujrat State Energy Generation Ltd. which had yielded tax free dividend and which, therefore, was liable to be included in computation for disallowance u/s 14A. The Ld. CIT(A) has given detailed reasoning for including only the investment in Gujrat State Energy Generation Ltd. for the purpose of computation of disallowance u/s 14A of the Act and for this purpose he has relied on judicial precedents also. Therefore, we have no reason to differ from the findings of the Ld. CIT(A) that only the investment in Gujrat State Energy Generation Ltd. has to be considered for the purpose of computation of disallowance u/s 14A r.w.Rule 8D of the Income Tax Rules, 1962. Therefore, grounds raised by the Department are dismissed.

5.1 As far as the assessee's contention regarding non inclusion of the interest component for the purpose of computation of disallowance u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962 is

concerned, it will be in the fitness of things, if the Assessing Officer examines the assessee's claim that the assessee had free reserves for making the investments and, therefore, no interest component should be included for the purpose of disallowance. Accordingly, the assessee's grounds on the issue are allowed for the statistical purpose.

5.2 As far as the issue of amortization of lease payment is concerned, since it is the assessee plea that additional information provided by the assessee should be considered and the issue be re-examined by the Assessing Officer and since the Ld. Sr. DR has also agreed that the issue be restored to the file of the Assessing Officer, we restore this issue to the file of the Assessing Officer for the purpose of re-examining the issue in the light of the additional information being provided by the assessee after giving proper opportunity to the assessee to present its case. Thus this ground also stands allowed for statistical purposes.

6.0 In the final result, the appeal of the assessee stands allowed for statistical purposes whereas the appeal of the Department stands dismissed.

Order pronounced on 13th September, 2021.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 13/09/2021

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT DEHRADUN