

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.51/AHD/2019
निर्धारण वर्ष/Asstt. Year: 2013-14

Sandip V. Parikh, 5, Malay Villa Bunglows, Sola Science City Road, Sola, Ahmedabad. PAN: ACZPP0214C	Vs.	A.C.I.T., Circle-4(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Deepak Shah, A.R
Revenue by	:	Shri D.B. Gohil, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **01/03/2022**
घोषणा की तारीख / **Date of Pronouncement**: **31/03/2022**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-4, Ahmedabad, dated 16/11/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The assessee has raised the following concise grounds of appeal:

Being aggrieved by the order dt. 16-11-2018 passed by the Id. CIT (A), the appellant begs to prefer this appeal on the following amongst other grounds:

1. That the Ld. CIT (A) erred in law and on the facts of the case in confirming the addition of Rs. 25,07,732/- being long term capital gains arising from sale of immovable property.

2. That the Ld. CIT (A) erred in law and on the facts of the case in confirming the disallowance of Rs. 1,37,9027- being expenditure laid out for earning exempt income u/s 14A of the act..

3. That the Ld. CIT (A) erred in law and on the facts of the case in confirming the order of the AO in charging interest u7s 234A, 234B and 234C of the Act.

4. Any other ground which may be urged before or during the hearing of the appeal.

3. The 1st issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for Rs. 25,07,732.00 being the amount of capital gain on the sale of property.

4. The facts in brief are that the assessee in the present case is an individual and engaged in the business of trading in Dye & Chemicals intermediates under the proprietorship of M/s Tulsi Marketing. The assessee along with the co-owner namely Smt. Nilamben Sandip bhai Parikh has sold the property for the total consideration of 67,82,500.00 only and the sale deed was registered dated 7-12-2012 i.e. in the year under consideration. The share of the assessee in the impugned property stands at 50% only. However, the assessee did not disclose any capital gain income in his income tax return on the sale of such property. On question by the AO, it was explained by the assessee that though sale deed was registered in the year under consideration but the possession was handed over only after the actual receipt of the consideration. As per the assessee the consideration of Rs. 68,00,000.00 was received dated 26-9-2013 and therefore the assessee has disclosed the capital gain in the financial year 2013-14 corresponding to assessment year 2014-15.

4.1 However, the AO disagreed with the contention of the assessee by observing that as per the sale deed the assessee was to receive the sale consideration within a period of 60 days from the date of sale deed i.e. 7 December 2012. Therefore, the assessee must have received the consideration within the year under consideration and thus the same is taxable in the year under dispute. It was also observed by the AO that in the case of property, the date of registration of the transfer deed/sale deed is relevant to determine the year in which such gain is taxable. Thus, the assessing officer worked out the amount of capital gain of Rs. 25,07,732.00 and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A.

6. The assessee before the learned CIT-A submitted that it is one of the precondition to hold that the transfer has taken place that the transferee gets the possession of the property. As such, the property was handed over to the transferee in the financial year 2013-14 after receiving the full consideration as agreed in the sale deed. For this purpose, the assessee has filed the confirmation of the payment consideration and possession received by the buyer, bank statement and the registered sale deed.

6.1 The assessee also contended that admittedly, the sale deed was registered in the year under consideration which was conditional in nature. Therefore, based on the sale deed, no inference can be drawn against the assessee by holding that the property in question has been transferred within the meaning of the provisions of section 2(47) of the Act.

6.2 The assessee further submitted that he has declared the capital gain in the next assessment year i.e. 2014-15.

7. However, the learned CIT-A disregarded the contention of the assessee and confirmed the order of the AO.

8. Being aggrieved by the order of the learned CIT-A the assessee is in appeal before us.

9. The learned AR before us contended that the Revenue in the case of the co-owner namely Mrs. Nilamben Sandip Bhai Parikh in the assessment proceedings framed under section 143(3) of the Act has admitted that the impugned capital gain income pertains to the assessment year 2014-15. Accordingly, the learned AR contended that no addition is warranted in the given facts and circumstances in the hands of the assessee.

10. On the other hand, the learned DR before us vehemently supported the order of the authorities below

11. We have heard the rival contentions of both the parties and perused the materials available on record. The controversy in the given case revolves whether the assessee has transferred the property in the assessment year 2013-14 or 2014-15. As per the assessee, the sale deed was registered in the assessment year 2013-14 in the year under consideration but no possession was handed over to the buyer. It was provided in the sale deed that the possession of the property will get transfer to the buyer upon receiving the payment from it (the buyer of the property being a company namely Shaily Chemicals Pvt. Ltd.). However, the possession was not handed over to the buyer by the assessee and therefore there was the delay by the buyer in making the payment to the assessee which was finally completed in the assessment year 2014-15. Thus the assessee has offered the capital gain income on the transfer of immovable property in the assessment year 2014-15. First of all, we note that if any addition is sustained in the hands of the assessee then the same is liable to be deleted from the total income of the assessee of the subsequent

assessment year, otherwise, it would lead to the double addition of the same item of income which is contrary to the provisions of law until and unless the law provides otherwise. It is the trite law that there cannot be double addition to the income of the assessee. However, from the preceding discussion we find that none of the authorities below has reduced the amount of taxable income for the assessment year 2014-15 by the amount of the income offered in the subsequent assessment year. In the absence of such direction by the authorities below, the addition in the year under consideration is not warranted in the given facts and circumstances.

11.1 At this juncture, it is important to note that the Revenue in the case of the co-owner namely, Mrs. Nilamben Sandip Bhai Parikh in the assessment proceedings under the provisions of section 143(3) of the Act for the assessment year 2014-15 has accepted the impugned amount of capital gain pertaining to the next assessment year i.e. 2014-15. The copy of the assessment order framed under section 143(3) of the Act in the case of the co-owner is available on record. In view of the above, we hold that once the Revenue has accepted the capital gain declared by the co-owner pertaining to the assessment year 2014-15, no addition for the year under consideration i.e. assessment year 2013-14 can be made. To our understanding, the Revenue cannot pick and choose the income for the purpose of taxation in different assessment years as favourable to it but it has to maintain the consistency in its approach while charging the tax on the income of the assessee. Accordingly, we are not inclined to uphold the order of the authorities below. As such, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

12. The 2nd issue raised by the assessee in ground No. 2 is that the learned CIT-A erred in confirming the disallowance made by the AO for ₹ 1,37,902.00 under the provisions of section 14-A of the Act.

13. The AO during the assessment proceedings found that the assessee has earned dividend income of ₹ 1,39,810.00 which was exempted from tax. But the assessee has not made any disallowance of the expenses incurred in connection with such exempted income in pursuance to the provisions of section 14-A read with rule 8D of Income Tax Rule. Thus, the AO invoked the provisions of section 14-A read with rule 8D and made the disallowance of interest expenses and administrative the expenses of ₹3,71,640.00 and 1,37,902.00 respectively aggregating to ₹ 5,09,542.00 and added to the total income of the assessee.

14. Aggrieved assessee preferred an appeal to the learned CIT-A who has partly confirmed the order of the AO by observing as under:

The interest-free funds available with the appellant are 7.44 crores and the total investments made for a sum of Rs.2.86 crores. Appellant further contended that disallowance cannot be more than the exempt income which is Rs.1,39,810/-. Appellant further contended that they have interest income of Rs.47,48,760/- as against interest expenditure of Rs.16,02,371/- hence even on this count, no disallowance towards interest expenses cannot be made. On careful consideration I find that appellant has more free reserve funds than the investments made and hence following the judgment of Hon'ble jurisdictional High Court of Gujarat in the case of CIT Vs. Suzlon Energy Ltd. Further as per the ratio of judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. Cortech Energy Pvt. Ltd. (2014) 45 Taxman.com 116 Gujarat, disallowance u/s.14A cannot exceeds the exempt income which is Rs.1,39,410/- in this case. Keeping in view this facts, the disallowance towards interest expenses amounting to Rs. 3.71.640/- is deleted. However, as regards the disallowance of 0.5% of the average investment, it is seen that appellant had exempt income amounting to Rs.1,39,810/- by using the common apparatus including the physical infrastructure, human resources as well as the time of key persons for making investment and continuing with the same, hence it cannot be case of the appellant that no expenses were incurred to earn this income.

5.5 It is noticed that Hon'ble ITAT, Ahmedabad in the case of Jivraj Tea Limited vs. DCIT beating ITA No.866/Ahd/2012, dated 28/08/2014 for AY 2008-09 and in Sahara India Financial Corporation Ltd. vs. DCIT 148 ITD 336 (Del) (AY 08-09), dated 10/01/2014 has held that disallowance u/s. 14A read with Rule 8D cannot exceed the exempt dividend income. Further the Hon'ble Ahmedabad ITAT in the case of M/s. Shree Laxmi Bidi Trading Co.ITA Nos.2662& 2908/Ahd/2014 for A.Y. 2010-11 and 2011-12 has restricted disallowance u/s.14A to the extent of exempt dividend income earned by appellant. In view of ratio laid down by jurisdictional ITAT and in absence of specific detail of related expenditure being kept by the appellant, the disallowance as per Rule 8D being 0.5% of the average investment is rightly made by the A.O and hence the same being Rs.1,37,902/- is upheld. Appeal on this ground is partly allowed.

15. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

16. The learned AR before us has not challenged the invocation of the provisions of section 14-A read with rule 8D but contended that the disallowance can be made while considering the investments which have yielded the exempted income.

17. On the other hand, the learned DR vehemently supported the order of the authorities below.

18. We have heard the rival contentions of both the parties and perused the materials available on record. The issue raised by the assessee is with respect to the disallowance made by the AO towards the administrative expenses under section 14A r.w.r. 8D of Income Tax Rule. The issue is no longer res-integra. There are series of judgments which mandate to make the disallowance of the expenses under section 14A read with rule 8D after taking the amount of investment which have yielded the dividend income. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of CIT vs. Corrtch Energy Pvt. Ltd. reported in 45 taxmann.com 116, where it was held as under:

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. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v. Winsome Textile Industries Ltd. [\[2009\] 319 ITR 204](#) in which also the Court had observed that where the assessee did not make any claim for exemption, section 14A could have no application.

18.1 In view of the above, there remains no ambiguity to the fact that only those investments which have yielded the income to the assessee shall only be considered for the purpose of making the disallowance under the provisions of section 14A read

with rule 8D of Income Tax Rule. Hence the ground of appeal of the assessee is partly allowed.

19. In the result the appeal filed by the assessee is **partly allowed**.

Order pronounced in the Court on 31/03/2022 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
31/03/2022
Manish