

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1420/Ahd/2019  
Assessment Year 2009-10**

Nirma Credit & Capital Pvt. Ltd. Nirma House, Ashram Road, Ahmedabad PAN: AAACN5351J (Appellant)	Vs	ITO, Ward-3(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri Bandish Soparkar, A.R.  
Revenue by: Shri S.S. Shukla, Sr. D.R.**

Date of hearing : 20-04-2022  
Date of pronouncement : 15-07-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-9, Ahmedabad in Appeal no. CIT(A)-9/10328/ITO Wd-3(1)(1)/17-18 vide order dated 03/07/2019 passed for the assessment year 2009-10.

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

“1. In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in points of law and facts.

2. In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in confirming disallowance U/S.14A r.w. rule 8D of I.T. Rules for Rs.15,28,320/-

3. Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.”

3. The brief facts of the case are that originally the assessee filed an appeal before ITAT, Ahmedabad regarding disallowances made under section 14A of the Act. The ITAT vide order dated 15-03-2003 allowed substantial relief to the assessee and restored the matter back to the file of the assessing officer with the following observations:

“7.5 "..... Thus, in order to examine the relevant facts, it would be expedient to remind the issue back to the file of AO. The AO shall grant reasonable opportunity to enable the assessee to demonstrate whether own funds together with interest free funds surpasses corresponding investment in shares, etc, and other non-business investments in aggregate. In the light of abovemdiscussion, the Assessing Officer is directed to examine the issue afresh in accordance with law after giving proper opportunity of being heard.

“8. In conclusion, the assessee would be entitled to benefit of set off of interest on AO being satisfied that the assessee is holding sufficient own fund together with other interest-free borrowed funds and other receipts at its command which are sufficient to cover the corresponding investments and other non-business utilization of funds. The disallowance of interest, if any, would thus be restricted in proportion to the shortfall in own funds and non-interest hearing fund in cumulative qua average of investments and other personal or non-business utilization as noted above.

9. *The matter is remanded back to the file of the AO for deciding the issue afresh in terms of directions noted above."*

4. Pursuant to directions of ITAT, Ahmedabad, the Ld. Assessing Officer agreed to assessee's contention in respect of exclusion of taxable investment of ₹ 11,80,46,000/- in unquoted security receipts of JMFRC on the ground that income generated by way of income/gain on the above mentioned investment were taxable and not exempt and therefore the investments of ₹ 11.80 crores do not qualify for disallowance under section 14A of the Act. The AO in his order further held that net interest expense of ₹ 65,88,474/- (₹ 27,83,07,877-interest expenses) minus ₹ 27,17,19,403/- (interest income) has to be considered for disallowing interest expense under section 14A of the Act. He further held that a sum of ₹ 1,11,52,075/- worked out at 0.5% of the average exempt assets of ₹ 23,04,14,963/- was not allowable under section 14A of the Act, as it is based on the binding formula as provided under section 14A of the Act. Accordingly, the Ld. Assessing Officer made the total disallowance of ₹ 15,28,320/- under section 14A of the Act. Aggrieved by the assessment order, the assessee filed appeal before Ld. CIT(A), who dismissed the appeal of the assessee with the following observations:

*"4.8 After considering the above-mentioned decision of the Hon'ble High Court of Gujarat, it is held that the A.O. did not make any error in interpreting and carrying out the reasoned directions given by the Hon'ble Tribunal and re-worked out the disallowance u/s 14A of the Act read with Rule 8D of the I.T. Rules which resulted in substantial reduction in the disallowance. Therefore, the disallowance of Rs.15,28,320/- made by the A.O. is confirmed and the ground no.2 of the appeal is accordingly dismissed."*

5. Before us, the primary contention of the counsel for the assessee were two-fold. Firstly, he contended that since the assessee was having substantial interest-free funds at its disposal, Ld. CIT(A) erred in confirming the order of the Ld. Assessing Officer holding that net interest expense of ₹ 65,88,474/- has to be considered for disallowing expense under section 14A of the Act. Secondly, the counsel for the assessee contended before us that no administrative expenses were incurred by the assessee to earn exempt income, and he relied upon judicial precedents to argue that in absence of a specific finding that the assessee had incurred administrative expenses for making exempt investments, no disallowance under section 14A of the Act is called for. The counsel for the assessee drew our attention to page 2, para 2.2 of the assessment order, wherein he pointed out that the assessee submitted that the assessee company had enough interest-free funds available amounting to ₹ 26.46 crores to make tax-free investments and it had not utilised the borrowed funds for the purpose of making investment. He then drew attention to page in 19 of the paper book to contend that after deducting a sum of ₹ 11.80 crores (as accepted by Ld. Assessing Officer in the assessment order), then the investment in tax-free funds amounted to only ₹ 17 crores. Accordingly, since interest-free funds available with the assessee were in far excess of the tax-free investment made by the assessee during the impugned assessment year, no disallowance is called for. He further contended that since no administrative expenses were incurred by the assessee for making investment in interest free funds, no disallowance is called for without the ld. Assessing officer giving a finding as to how much administrative expenses have been incurred for earning exempt income.

6. We have heard the rival contentions and perusal the material on record. The Gujarat High Court in numerous decisions has consistently taken the position that if interest-free funds available with the assessee exceed the investments made in funds yielding exempt income, then no disallowance is called for under section 14A of the Act. In the case of **Hitachi Home and Life Solutions (I) Ltd.[2014] 41 taxmann.com 540 (Gujarat)**, the Gujarat High Court held that where assessee's interest free funds exceeded investment made for earning exempted dividend income, disallowance under section 14A was not justified. Again, in the case of **UTI Bank Ltd[2018] 99 taxmann.com 392 (Gujarat)**, the Gujarat High Court held that no disallowance could be made under section 14A where assessee's interest-free funds far exceeded its interest-free investments. In the case of **Gujarat Narmada Valley Fertilizers Co. Ltd [2014] 42 taxmann.com 270 (Gujarat)**, the Gujarat High Court held that where assessee-company received dividend on UTI and shares and investment in same was made in earlier years and interest free funds available with assessee were much larger as compared to investment, disallowance of assessee's claim for interest expenditure by applying section 14A was incorrect. In case of **Gujarat Fluoro chemicals Ltd.[2020] 120 taxmann.com 433 (Gujarat)**, the Gujarat High Court again reiterated that where interest free funds available with assessee were far more than gross investment, it could safely be harboured that interest bearing funds was not invested by assessee and, thus, no disallowance under section 14A to be made. In view of the consistent position taken by the Gujarat High Court, as applied to the facts instant case, in our considered view, no disallowance is called for in respect of interest expenses under section 14A of the Act, when the assessee is having

sufficient interest-free funds at its disposal in excess of investment made in instruments yielding exempt income.

6.1 However, so far as administrative expenses concerned, the counsel for the assessee submitted before us that no administrative expenses were incurred for earning investment yielding exempt income. However, the assessee company is engaged in the business of non-banking financial institution and it is difficult to accept the proposition that no administrative expenses have been incurred by the company in making investments leading exempt income. As per the assessee's own submission, he has made investment of ₹ 17 crores yielding income which is exempt from tax. It is not acceptable to simply state that no administrative expenditure was incurred to earn the above exempt income. In the case of **Amit P. Pandya [2014] 50 taxmann.com 276 (Mumbai)**, it has been held that the onus to show that no expenditure stands incurred in relation to income not forming part of total income lies squarely on assessee. The Ahmedabad Tribunal in the case of **Axis Bank Ltd.[2017] 79 taxmann.com 187 (Ahmedabad - Trib.)** held that administrative expenses need to be disallowed under section 14A of the Act. The Kolkata Bench of the ITAT in the case of **Coal India [I.T.A No. 1032/Kol/2012** decided on 13-5-2015 held that the term 'expenditure' as per section 14A would include expenditures that are related to the investment made i.e. administration, capital expenditure, travelling expenses, operating expenses, etc. That such investment decisions are highly strategic in nature and are required to be made by highly qualified and experienced professionals, require research and analysis, need to attend board meetings and make policy decisions. By no stretch of imagination it

can be assumed that such activities are done without incurring any expenditure. The disallowance of administrative expenditure under section 14A of the Act was again affirmed by the Mumbai ITAT in the case of **Zee Entertainment Enterprises Ltd.[2017] 81 taxmann.com 379 (Mumbai)**. The Ahmedabad in the case of **Sun Pharmaceutical Industries Ltd.[2017] 84 taxmann.com 217 (Ahmedabad - Trib.)** directed the A.O. to compute the disallowance for administrative expenditure as per the formula given under Rule 8D. This issue again came up before the Mumbai ITAT in the case of **Future Retail ITA 5959/Mum/2016**, wherein the Mumbai ITAT observed as under:

*“We do not agree with the submission of ld. AR that assessee has not incurred any expenditure and not warranted to remit this issue back to AO. The investment does require constant monitoring even though it is made within the group concern. Sometimes the method applied as per rule 8D(2)(iii) gives absurd result like the disallowance is more than the actual administrative expenses. Therefore, we are directing AO to determine the total administrative expenses and also determine the total income earned by assessee including taxable and exempt income apply the ratio of income to determine the administrative expenses and can be apportioned to exempt income. Simultaneously calculate 0.5% of the investment as per rule 8D(2)(iii) of the Rule in applying the Rules he should consider only those investments which has actually earned dividend /exempt income. Then compare the both method of calculation and in order to apply*

*provision of section 14A he should consider the amount calculated above said two methods whichever is less”*

In the case of DCIT vs. Torrent Power Grid Ltd. vide ITA no. 524/Ahd/2015 & CO No. 61/Ahd/2015 (in ITA No. 524/Ahd/2015), the ITAT (Ahmedabad Bench) observed as under:-

“11. We have heard the rival contentions and perused the materials available on record. In the instant case, the assessee has earned dividend income which was exempted u/s 10(34) of the Act. No disallowance was made by the assessee in relation to such dividend income. **The assessee claims that it has not incurred any expenses in relation to such dividend income.** However, on perusal of its Financial Statement, we note that there were sale and purchase of investment as evident from schedule 6 of the Financial Statement, placed on page 37 of the PB.

.....  
*From the above schedule, it can be seen that there was investment in mutual funds amounting to Rs. 240,061,953/- which has been sold during the year. Similarly, the investment has been made by the assessee in the mutual fund for Rs.80,000,000/-. **Therefore, the plea of the assessee that it has not spent any time and energy on such investment does not appear to be correct. It is because the top management is certainly involved in the process of purchase and sale of investment.** Therefore, we note that the AO has derived the satisfaction by issuing show-cause notice dated 15-10-2013 as reproduced below:*

“4.2 Accordingly, the assessee was asked vide notice dated 15.10.2013 as to why disallowance under section 14A read with rule 8D should not be made in view of the fact that you have earned dividend income which is exempt from tax and no expenses have been claimed to have been incurred for earning this income.”

*Therefore, we hold that the AO has rightly invoked the provision of Rule 8D for making the disallowance of expenditure in relation to dividend income.”*

6.2 In view of the consistent position taken by various Tribunals, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in confirming disallowance in respect of administrative expenses as per the formula given under Rule 8D.

7. In the result the assessee’s appeal is partly allowed.

Order pronounced in the open court on 15-07-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 15/07/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद