

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 532/Ahd/2020  
Assessment Year : 2017-18

Aura Securities Private Limited, 403, 404 Shilp Building, CG Road, Navrangpura, Ahmedabad - 380009 PAN : AABCM 0602 L	Vs	Income Tax Officer, Circle-1(1)(1), Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Biren Shah & Shri Dhrunal Bhatt, ARs	
Revenue by :	Shri Abhimanyu Singh Yadav, Sr. DR	

सुनवाई की तारीख/Date of Hearing : 16/06/2022  
घोषणा की तारीख /Date of Pronouncement: 15/07/2022

**आदेश/ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT:**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-1, Ahmedabad ("CIT(A)" in short) dated 21.09.2020 and the solitary ground raised therein reads as under:-

*"On the facts and in the circumstances of the case of the appellant, the Ld. CIT(A) has erred in not allowing relief of disallowance for Rs.68,06,152/- made u/s 14A of the Act by the appellant into its return of income while doing so he has erred in not following the ratio of decision of Hon'ble Gujarat High Court in case of CIT vs. Corrttech Energy Pvt. Ltd. [45 taxmann.com 116]"*

2. The assessee, in the present case, is a company which filed its return of income for the year under consideration on 31.10.2017 declaring a loss of Rs.(-)1,29,46,740/-. The said return was selected for scrutiny under CASS and a notice under Section 143(2) of the Income-tax Act, 1961 ["the Act" in short] was issued by the Assessing Officer to the assessee on 27.08.2018. During the year under consideration, the assessee had made substantial investments in quoted and unquoted shares; and in the return of income filed, disallowance of Rs.68,06,152/- was offered suo moto by the assessee under Section 14A read with Rule 8D. During the course of assessment proceedings, it was submitted by the assessee

before the Assessing Officer that it had not earned any exempt income during the year under consideration and therefore Section 14A of the Act had no application in its case. The Assessing Officer did not accept this contention of the assessee in view of CBDT Circular No. 5/2014 dated 11.02.2014 and proceeded to re-compute the disallowance to be made under Section 14A of the Act by applying Rule 8D at Rs.73,06,483/-. He accordingly made a further disallowance of Rs.5,00,331/- under Section 14A r.w. Rule 8D(2) in the assessment completed under Section 143(3) of the Act vide an order dated 30.10.2019.

3. The disallowance made by the Assessing Officer under Section 14A r.w. Rule 8D was challenged by the assessee in an appeal filed before the learned CIT(A) and the submission made before the Assessing Officer that there being no exempt income actually earned by the assessee for the year under consideration, the invocation of Section 14A was not called for was reiterated on behalf of the assessee before the learned CIT(A). Reliance in support of this contention was placed on behalf of the assessee on the various judicial pronouncements including the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Corrttech Energy Pvt. Ltd. [(2014) 45 taxmann.com 116 (Guj.)]. The learned CIT(A) agreed with the contention of the assessee that the issue was squarely covered in favour of the assessee by various judicial pronouncements including the decision of Hon'ble jurisdictional High Court in the case of Corrttech Energy Pvt. Ltd. (supra), wherein the similar issue was decided in favour of the assessee after considering the CBDT Circular relied upon by the Assessing Officer. He, however, still sustained the disallowance of Rs.73,06,483/- made by the Assessing Officer under Section 14A r.w. Rule 8D to the extent of Rs. 68,06,152/- being the disallowance offered by the assessee suo moto observing that the returned income could not be reduced by disallowance already made by the assessee in the return of income. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of

both the sides, the solitary issue involved in this appeal of the assessee is squarely covered by the decision of Coordinate Bench of this Tribunal rendered in the case of DCIT Vs. Greenland Infracon Pvt. Ltd. vide its order dated 14.11.2018 passed in ITA Nos. 2039 and 2040/Ahd/2016 wherein a similar issue has been decided by the Tribunal in favour of the assessee vide paragraph Nos. 8 to 10 which read as under:-

*"8. We shall now turn to the second issue raised on behalf of the Revenue regarding propriety of the action of the CIT(A) in granting relief on the disallowance (suo moto made by the assessee) beyond the return of income and in the absence of any formal revised return. The CIT(A) has discussed this aspect in very great detail in para 2.5 to 2.28 of its order. We are not inclined to reiterate the findings of the CIT(A). However, we fully endorse the observations of the CIT(A) which essentially holds that the mistake or inadvertence on the part of the assessee whereby an income not taxable has been wrongly offered for tax, will not operate as any kind of estoppel against the assessee and regardless of whether the revised return was filed or not. Once the assessee is in a position to show that it has been over assessed under the provisions of the Act even on account of assessee's own mistake or otherwise, the Revenue is under duty to assess correct income.*

*9. It is trite that the authorities under the Act are under sacrosanct obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, mis-conception or not being properly instructed, is over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This is the view which flows from innumerable judgments including CIT vs. Shelly Products (2003) 261 ITR 367 (SC), S. R. Koshti vs. CIT (2005) 276 ITR 165 (Guj), Ester Industries vs. CIT (2009) 185 TAXMAN 266 (Delhi) and CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom). The essence of these decisions are that mere admission on the part of the assessee with respect to an addition/disallowance in its original return or in revised return would not ipso facto bar an assessee from claiming an expense or disputing an addition if it is otherwise permissible under law. It is thus well settled that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Revenue authorities cannot enforce untenable actions of the assessee against it which led to declaration of income of higher amount incorrectly. It is thus open to assessee to show that it was over assessed in correctly owing to its own mistake.*

*10. So viewed, we do not see any potency in the argument laid on behalf of the Revenue that the CIT(A) allegedly committed error in granting total relief in the matter of disallowance under s.14A of the Act. In our considered view, the action of the CIT(A) in granting relief under s.14A of the Act on account suo moto disallowance by the assessee and thereby granting relief higher than claimed in the return of income cannot be faulted in law."*

5. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Greenland Infracon P. Ltd. (supra), we respectfully follow the decision rendered by the Co-ordinate Bench of this Tribunal in the said case and delete the disallowance of Rs.68,06,152/- made by the Assessing Officer and confirmed by the learned CIT(A).

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15<sup>th</sup> July, 2022 at Ahmedabad.

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

Ahmedabad, Dated 15/07/2022

*✍*

Sd/-

**(P.M. JAGTAP)**  
**VICE-PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad