

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1642/Ahd/2019
Assessment Year: 2016-17**

The D.C.I.T.,
Circle – 1(1)(1), Ahmedabad.

vs. M/s. Adani Agri Fresh Limited,
Adani House,
Near Mithakhali Circle,
Navrangpura,
Ahmedabad – 380 009.
[PAN – AAFCA 0413 P]

**C.O. No.20/Ahd/2020
(In ITA No.1642/Ahd/2019
Assessment Year: 2016-17**

M/s. Adani Agri Fresh Limited,
Adani House,
Near Mithakhali Circle,
Navrangpura,
Ahmedabad – 380 009.
[PAN – AAFCA 0413 P]
(Appellants)

vs. The D.C.I.T.,
Circle – 1(1)(1), Ahmedabad.

(Respondents)

Revenue by : Shri Ramesh Kumar, Sr. DR
Assessee by : Shri Biren Shah, A.R.

Date of hearing : 06.07.2022
Date of pronouncement : 20.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue and the Cross Objection is filed by the assessee against the order dated 14.08.2019 passed by the CIT(A)-1, Ahmedabad for the Assessment Year 2016-17.

2. The grounds of appeal are as under:

"1. The Ld. CIT(A) has erred in law and on facts in restricting the disallowance of Rs.9,06,254/- out of total disallowance of

Rs.1,65,83,699/- made by the Assessing Officer u/s.14A r.w. Rule 8D of the I.T. Rule.

2. *The Ld. CIT(A) has erred in law and on facts in not considering the CBDT's Circular No.5/2014 dated 11.02.2014, which prescribes that Rule 8D r.w.s. 14A of the Act provides for disallowance of expenditure even where taxpayer in a particular year has not earned any exempt income.*
- 3) *It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored."*

3. The assessee is engaged in the business to establish, construct, build, own and maintain and to carry on the business as keepers of cold storages, strong chambers, ice plants, refrigerators and room coolers for storing all kinds of products and to engage in the business of ware housing and to carry on business and act as promoters, organisers and developers of land, estate, property, co-operative societies, association, housing schemes, shopping office, complexes, townships, farms, houses, holiday resorts and to finance for the same. The original return of income was filed on 08.11.2016 declaring total income of Rs (-) 8,43,06,035/-. The Assessing Officer made disallowance under Section 14A of the Income Tax Act, 1961 amounting to Rs.1,65,83,699/- read with rule 8D as per clause (f) to Explanation-1 to Section 115JB(1) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Ld. AR submitted that the issue involved in the present appeal filed by the Revenue is covered in favour of the assessee as per the decision of the Hon'ble Gujarat High Court in the case of DCIT vs. Alembic Limited (Tax Appeal No.553 of 2017 with Tax Appeal No.554 of 2017.

6. Ld. DR relied upon the Assessment Order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee claimed interest expenditure of Rs.138.27 Crores from interest free own funds in the form of share capital and

reserves as well as surplus of Rs.85.67 crores on 31.03.2016 as against Rs.97.67 Crores as on 31.03.2016. Thus, interest free funds were much higher than the investment in shares and partnership firms. There is no change in investment except increase investment to the extent of share of profit received from partnership firm. The CIT(A) while restricting the disallowance under Section 14A of the Act directed the Assessing Officer to restrict the same to Rs.9,06,254/- on the basis of the Special Bench decision in case of ACIT vs. Vireet Investment Pvt. Ltd. (2017) 82 Taxmann.com 415, order dated 16.06.2017. The computation under Clause(f) Explanation-1 to Section 115JB(2) is to be made without restoring to the computation as contemplated under Section 14A read with Rule 8D of the Income Tax Rules, 1962. The CIT(A) also relied upon the decision of Jurisdictional High Court in case of PCIT vs. Alembic Limited (supra) and, therefore, deleted the book profit and restricted the disallowance under Section 14A to the extent of Rs.9,06,254/-. The issue is covered and identical in the present case. The CIT(A) has rightly made the said observations and there is no need to interfere with the same. Hence, appeal of the Revenue is dismissed.

8. The Cross Objection is not pressed by the assessee. Hence, the same is dismissed.

9. In the result, appeal of the Revenue as well as Cross Objection filed by the assessee both are dismissed.

Order pronounced in the open Court on this 20th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 20th day of July, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*