THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 788/Ahd/2015 **Assessment Year 2009-10**

Deep Industries Ltd., C/o. Ketan H. Shah, Advocate 903, Sapphire Complex, C.G. Road, Navrangpura, Ahmedabad-9 PAN: AAACD6915E (Appellant)	Vs	Dy. CIT(OSD), Range-1, Ahmedabad-9 (Respondent)

Assessee by: **Shri Ketan Shah, A.R. &**
Shri Aman Shah, A.R.
Revenue by: **Shri Purshottam Kumar, Sr. D.R.**

Date of hearing : 09-05-2022
Date of pronouncement : 27-07-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-III, Ahmedabad in Appeal no. CIT(A)-III/369/ACIT(OSD).R-1/13-14 vide order dated 31/10/2013 passed for the assessment year 2009-10.

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

> *"The following ground 4 are without prejudice to each other.*
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> *In view of the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred –*
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> *1. in confirming the disallowance U/S.14A at Rs.9,26,753/- and also erred in not appreciating the facts as well as law that sec.14A is not applicable, and therefore, no disallowance ought to have been confirmed.*
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> *2. in not appreciating the facts in any case, the assessee is have reserve and surplus by way of share capital, and general reserve, and therefore, the appellant is having interest free fund, and as such, there is no question of application of sec.14A of the Act.*
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> *The appellant craves leave to add/delete/alter and/or amend any of grounds as aforesaid as and when necessary."*

3. The brief facts of the case are that the assessee earned dividend income to the tune of ₹ 64,30,214/-which is exempt from tax. The AO during the course of assessment proceedings observed that the assessee has investments to the tune of ₹ 14,88,93,893/-as at 31-03-2009, while the value of investment was ₹ 7,28,78,623/-as at 31-03-2008. On being requisitioned, the counsel for the assessee submitted that investment in mutual fund amounting to ₹ 14.78 crores was made out of IPO proceeds, which funds were lying idle with the assessee company. Further, the counsel for the assessee submitted that no direct expenditure was incurred in relation to receiving income of dividend as these investments were made out of temporary idle IPO proceeds. Accordingly, since no expense was incurred for earning exempted income, there should be no disallowance under section 14A of the Act. However, the AO rejected the assessee's contentions and

made a disallowance of ₹ 10,43,772/-. In appeal, Ld. CIT(Appeals) rejected the assessee's contentions and upheld the AO. However, on the basis of revised working for disallowance under section 14A of the Act submitted by the assessee, he restricted the disallowance to ₹ 9,26,753/-. While dismissing the assessee's appeal, Ld. CIT(Appeals) made the following observations:

> *"6. Facts of the case and arguments of the appellant have been carefully considered. It has been held by Hon'ble ITAT Mumbai in the case of Taj Sats Air Catering Ltd (20 Taxman.com- 80) that where assessee had not allocated any expenditure for earning tax free dividend income, reasonable disallowance was justified.*
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> *7. It was further field in. the case of Techitopak Advisors. P. Ltd. by Hon'ble IT AT Delhi Bench (18 taxman.com 146) that disallowance under 1.44 is justified even if no dividend income was earned during the year.*
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> *8. In the case, of Visual Graphics Computing Service (I) Pvt. Ltd reported in (21 taxman.com 145) it was held by Hon'ble ITAT Chennai Bench that even if there may not be my direct visible expenditure to earn dividend income, a reasonable portion of top 'management time / expenditure could be attributed to earning of that income.*
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> *9. When the case of the appellant is examined in view of this legal and factual position, then it is found that the appellant company raised share capital and share premium through IPO in the month of August 2006 and September 2006. Therefore the claim that investment during the year was made out of IPO funds is not acceptable due to large time gap between the date of IPO and investment during the year. I therefore hold that AO has rightly made disallowance u/s. 14A and his action is confirmed. However, appellant has given revised working of disallowance u/s. 14A, according to which the total disallowance comes to Rs. 9,26,753/- as against Rs. 10,44,072/-. In*

view of reasons, given by the appellant, the revised computation is acceptable. AO is therefore directed to restrict disallowance u/s. 14A to Rs. 926,753/- as against Rs. 10,44,072/- made by him. Ground no. 1 of the appeal is thus partly allowed."

4. The assessee is in appeal before us against the aforesaid order of the Ld. CIT(Appeals). At the outset we note that the appeal is time-barred by 462 days. The Ld. Counsel for the assessee submitted an affidavit and submitted that delay is caused due to the fact on receipt of order passed by Ld. CIT(Appeals), the CA of the assessee advised that though penalty has been initiated, but the same would not be levied by the Department. However, subsequently 263 proceedings were also separately initiated against the assessee for the captioned assessment year, for which appeal was filed before ITAT, Ahmedabad. The AR of the assessee advised that since penalty has not been dropped, it would be now advisable to file an appeal against the order passed by Ld. CIT(Appeals). It was pursuant to the advise of AR of the assessee that the present appeal has been filed, and this process has caused a delay in filing of appeal. The law is well settled by the Higher Courts that while dealing with the application for condonation of delay, the Court has to see the conduct of the party and plausible and sufficient cause for non-filing of the statutory appeal within time. The Apex Court in **Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072**, analyzed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life purpose for the existence of the institution of Courts. It was further observed

that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The Apex Court further held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. The Apex Court in **N. Balakrishnan v. M. Krishnamurthy 2008 (228) ELT 162**, the Apex Court, while condoning the delay of 883 days in filing an application for setting aside the ex parte decree held "That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor."The Apex Court in **Nand Kishore v. State of Punjab [1995] 6 SCC 614**, under the peculiar circumstances of the case condoned the delay of about 31 years, in

approaching the apex Court and held that it must be remembered that in every case of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the pleas and to shut the doors against him. If explanation does not smack mala fide or does not put forth as a dilatory strategy, the Court must show utmost consideration of such litigant.

4.1 Coming to the instant case, we have perused the affidavit filed by the previous counsel of the assessee who deposed that the delay was caused due to advise of the assessee's CA and for reasons/ circumstances mentioned in the Affidavit. The entire process caused a delay of 462 days. In our considered view, the Assessee has demonstrated the bonafide reasons and sufficient cause for non-filling of the appeal within the time limit. The contention of the assessee is supported by the affidavit and even we could not find any material contrary and/or adverse to the claim of the assessee, therefore explanation offered and cause shown qua delay of 462 days in filling of the instant appeal seems to be bonafide, reasonable, sufficient and unintentional, hence deserves to be condoned. Consequently the same stands condoned.

5. On merits, the counsel for the assessee drew our attention to page 12 the paper book to submit that as at 31-03-2009, the assessee had reserves and surplus amounting to ₹ 81,77,28,384/-as against investment made for earning exempted income of ₹ 14,78,73,373/-. Therefore, the counsel for the assessee submitted that the assessee company had substantial interest-free funds at its disposal, and therefore no disallowance is called for under section 14A of the Act. The counsel for the assessee then drew our attention

to page 18 of the paper book, Schedule-2 -Reserve and Surplus and submitted that the funds were on account of idle funds out of IPO proceeds from preceding year, which were at the disposal of the assessee during the year under consideration. The counsel for the assessee further submitted that even the current year profit of the assessee is ₹ 19,84,18,766/- which is sufficient to take care of investment of ₹ 14,78,73,373/-. Accordingly, the counsel for the assessee submitted that in the instant set of facts, since the assessee is having sufficient interest-free funds at its disposal, no disallowance under section 14A of the Act is called for. In response, the Ld. DR relied upon the observations of the Ld. CIT(Appeals) order.

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 amounting to ₹ 3,72,347/- (as per the break-up provided by the assessee, reproduced at page 6 of Ld. CIT(Appeals) order), when the assessee is having sufficient interest-free funds at the disposal in excess of investment made in instruments yielding exempt income.

7. However, so far as disallowance of administrative expenses concerned amounting to ₹ 5,54,406/- (as per the break-up provided by the assessee, reproduced at page 6 of Ld. CIT(Appeals) order), is concerned, the counsel for the assessee submitted before us that no administrative expenses were incurred in respect of investment yielding exempt income. However, in our considered view, 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 ₹ 14,78,73,373/- crores yielding income which is exempt from tax. It is not acceptable to simply state that no administrative

expenditure was incurred in making such a substantial investment for the purpose of earning 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 was 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)**. In the case of **Visual Graphics Computing Services (India) (P.) Ltd. [2012] 21 taxmann.com 145 (Chennai)**, ITAT held that even if, there might not be any direct visible expenditure to earn such dividend income, a reasonable portion of the top management time/expenditure could be attributed to earning of that income. It was based on the general principle that no income was gratuitous and every income was earned after incurring certain expenses. Therefore, a reasonable disallowance was called for. As

quantification was not permissible under rule 8D for the impugned assessment year, the disallowance had to be made on the basis of reasonableness and fairness. The Mumbai ITAT in the case of **Taj Sats Air Catering Ltd. (20 Taxman.com 80)** held that where assessee had not allocated any expenditure for earning interest free dividend income, reasonable disallowance was justified. 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"*

8. In the case of **Torrent Power Grid Ltd. in I.T.A. No.524/Ahd/2015**, the ITAT in this context made the following observations:

> *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. The relevant extract of schedule 6 is reproduced as under:*
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> ……
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> *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:*
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> > *"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.

We also note that the ratio laid down by the Hon'ble Supreme court in the case of Sintex Industries Ltd (supra) is not applicable to the facts of the instant case. In the case of Sintex Industries Ltd., the assessee has made the disallowance of administrative expenses of Rs.52,000/- for the expenses incurred in relation to exempted income. However, in the case on hand assessee has not made any disallowances, therefore, we are of the view that the ratio of the Supreme Court judgment cannot be applied in the given facts and circumstances. Similarly, the order relied upon by the ld. AR in the case of Gulshan Investment company Limited (Supra) does not support the case of the assessee. It is because the issue involved in such case was based on the disallowance of the expenses in relation to the shares held as stock in trade though such facts are not there in the case on hand. Therefore we are reluctant to take any guidance and support from such a case, i.e. Gulshan Investment company Limited (Supra).

Thus, we are of the view that the disallowances made by the AO and subsequently confirmed by the Ld. CIT(A) are as per Rule 8D(2)(iii) of Income Tax Rule. Thus, the ground raised by the assessee in its CO is dismissed.

9. In view of the consistent position taken by various Tribunals including the Ahmedabad ITAT, 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 expenditures and directing the A.O. to compute the

disallowance for administrative expenditure made by the AO as per the formula given under Rule 8D.

10. In the result the assessee's appeal is partly allowed.

Order pronounced in the open court on 27-07-2022

Sd/-	**Sd/-**
(P.M. JAGTAP)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad : Dated 27/07/2022

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