

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.178/SRT/2020

Assessment Year: (2014-15)

(Virtual Court Hearing)

Gujarat Narmada Valley Fertilizers & Chemicals Ltd., Narmada House, Narmadanagar, Bharuch – 392015.	Vs.	The PCIT-3, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACG8372Q		
(Appellant)		(Respondent)
Assessee by	Shri Yogesh Shah, AR	
Respondent by	Shri Ashok B. Koli, CIT-DR	
Date of Hearing	03/01/2023	
Date of Pronouncement	22/02/2023	

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax –3 [in short ‘the Ld. PCIT’], Vadodara under section 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), vide order dated 04.05.2020.

2. Grounds of appeal raised by the assessee are as follows:

*“1. The order passed by the CIT is erroneous on facts and contrary to the provisions of the law and therefore needs to be quashed it is submitted it be so held now.*

*1.1. The CIT erred on facts and in law in holding that the order passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act (Act) was erroneous and prejudicial to the interest of the revenue and thereby restoring the issue of disallowance u/s 14A for fresh adjudication. It is submitted it be so held now.*

*1.2 The CIT erred in holding that the AO has failed to enquire & examine the disallowance u/s 14A when in fact the details & submissions had been made regarding this issue in regular proceedings. It is submitted it be so held now.*

*1.3 The CIT erred in facts and in law in holding that the contentions raised by the appellant necessitate re-verification of the matter in its entirety without*

*appreciating that section 263 does not confer the power to re-review the same set of records. It is submitted it be so held now.*

*1.4 The learned CIT failed to appreciate that the view taken by the AO was a possible view duly supported by judicial precedents in own case of appellant and the provisions of section 263 of the Act had no applicability in the facts of the case. It is submitted that it be so held now.*

*1.5 The learned CIT failed to appreciate that no further disallowance u/s 14A was required to be made and erred in setting aside to AO for re-verification. It is submitted that it be so held now.*

*2. The learned CIT has erred in not appreciating that the investments in securities yielding tax free income were made from own funds and Rule 8D was not applicable to the appellant's case.*

*2.1 The learned CIT has erred in not appreciating that interest expenses were of specific borrowings and cannot be considered for application of Rule 8D(ii). It is submitted that it be so held now."*

3. In this appeal, the assessee has raised a multiple grounds of appeal. However, at the time of hearing, we have carefully perused all the grounds raised by the assessee and noted that most of the grounds raised by the assessee are either academic in nature or contentions in nature. All the grounds raised by the assessee challenge the action of Ld. PCIT to exercise his jurisdiction under section 263 of the Act. Therefore, all these grounds are being disposed of as one.

4. Brief facts *qua* the issue are that in this case, the assessee had filed return of income on 29/11/2014 declaring total loss of Rs.45,56,60,463/-, before allowing deduction under Chapter VIA of the Act which is the claim of deduction u/s.80IA amounting to Rs.72,65,30,991/- but restricted to the extent of total income. The returned income is shown at NIL. The assessee's case was selected for scrutiny under CASS. The assessment u/s. 143(3) r.w.s 144C of the Act was completed vide order dated 29/11/2017 determining total income at Rs.37,01,60,860/-, and calculated adjusted book profit u/s. 115JB at Rs.4,19,55,49,819/-.

5. On examination of assessment records, it was found by Ld. PCIT that the assessment order u/s. 143(3) r.w.s 144C of the Act dated 29/11/2017 passed by the ACIT, Circle-1, Bharuch is both erroneous and prejudicial to the interest of revenue. Accordingly, a show cause notice u/s. 263 of the Act was issued on

19/03/2020, which was duly served upon the assessee. The relevant portions of the notice are as under:

*"In your case, the case records for the A.Y.2014-15 were called for and examined. The return of income for the A. Y.2014-15 was filed by you on 29.11.2014 declaring total loss of Rs.45,56,60,463/- before allowing deduction under Chapter VI-A of the Act which is the claim of deduction u/s. 80I A amounting to Rs. 72,65,30,991/- but restricted to the extent of total income. Returned income is shown at NIL. The case was assessed under section 143(3) r.w.s 144C on 29.11.2017 by determining total income of Rs.37,01,60,860/- and calculated adjusted book profit u/s.115JB at Rs.4,19,55,49,819/-.*

*3. On scrutiny of records, it was noticed that dividend income of Rs.4,32,215,625/- was shown as exempted income and has claimed huge interest expenses amounting to Rs.88,53,85,000/- (note 24 of P & L A/c) during the year under consideration. During the year, there is an average value of investment amounting to Rs.1,30,99,46,000/-. Since, the income from these investments is exempted from the income-tax, provisions of section 14A of the I.T. Act, 1961 r.w.r. 8D of the Income-tax Rules, 1962 were required to be applied/invoked by the AO and expenditure in relation to investment made to earn such exempted income was required to added back to total income of the assessee. While finalizing his computation of income assessee had made disallowance of Rs.4,52,000/- u/s.14A r.w.s Rule 8D. However, as per calculation given below, the amount disallowable u/s.14A comes to Rs.2,07,87,708/-.*

Table 1

Mode of payment or investment	Payment value
Amount of interest expenses (A)[note24]	Rs.88,53,85,000
Average value of investment (B) [note 12]	Rs.(1,32,14,90,000 +1,29,84,02,000)/2= 4,90,000 Rs.1,30,99,46,000/-
Average value of total assets C	Rs.(92,69,74,81,00 + 70,21,98,23,000)/2= Rs.81,45,86,52,000
Amount of disallowance (A*B/C)	Rs.1,42,37,978/- (a)

Table 2

Mode of payment or condition of payment	Value in rupees
0.5% of the average value of investments	Rs.1,30,99,46,000* 0.5% = 65,49, 730(b)
Total amount disallowable u/s, 14A rws. Rule 8D (a+b)	Rs.1,42,37,978 + 65,49,000 = 2,07,87,708
Amount disallowed by the assesses and allowed by AO u/s. 14A RWS Rule 8D	Rs.4,52,000/-
Short Disallowance	Rs.2,03,35,708/-
Underassessment of income as discussed above	Rs.2,03,35,708/-
Income-tax @30% +10% +EC & SHEC @ 3% = 33.99%	Rs.69,12,107/-

*Thus, the differential amount of Rs.2,03,35,708/- was also required to be added back to the total income of the assessee u/s. 14A r.w.s Rule 8D. During the assessment, the same was not disallowed by the A.O. Due to the omission to do so has resulted into underassessment of income of Rs.2,03,35,708/-. Therefore, the order passed u/s. 143(3) of the Act is both erroneous and prejudicial to the*

interests of revenue. From the above, it is clear that the Assessing Officer has failed to carry out enquiries as warranted by the facts and circumstances of the case and assessment has been completed without examining all aspects which were required to be looked into for determining the total income of the assessee. It has been held in number of cases by the Hon'ble Courts that unlike the Civil Court which is neutral to give a decision on the basis of evidence produced before it, the Assessing Officer is not only an adjudicator but also an investigator. He cannot remain passive on the face of a return, which is apparently in order but calls for further enquiry. It is his duty to establish the truth of the facts stated in the return of income when the circumstances of the case are such as to provoke enquiry. If there is failure to make such enquiry, the order is erroneous and prejudicial to the interest of revenue. In this regard useful references may be made to the following cases:

*Gee Vee Enterprises vs. Addl. CIT, 99 ITR 375(DEL)*  
*Rampyari Devi Saraogi vs. Commissioner of Income-tax, 67 ITR 84(SC)*  
*Malabar Industrial Co. Ltd. vs. CIT, (2000) 243 ITR 83 (SC)*  
*Rajalakshmi Mills Ltd., vs. ITO 2009, ITOL-317-ITAT-MAD-SB*

It may further be stated that Explanation 2 has been inserted below sub-section (1) of Section 263 wherein it has been declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner of Income-tax, the order is passed without making enquiries or verification which should have been made. In view of the above facts, clear provisions of the Act and the authorities, you are hereby required to show cause as to why the assessment order passed by the Assessing Officer on 29.12.2017 should not be set aside for de novo consideration as per the provisions of the section 263 of the Act.

6. In response, the assessee has submitted its reply vide letter dated 25/03/2020 as under (Brief):

*“The assessee company has not incurred any direct expenditure for earning tax free income. However, expenditure of Rs.4,51,692/- towards salary of employee and demat charges which is attributed towards earning tax free income, had already been disallowed as per section 14A of the Act in computation of income. Activities relating to the deployment of retained earnings are necessary and inseparable ingredient of any well-managed profitable business. Just because the activities of deployment of such retained earnings happen to result into producing tax free income even as they produce taxable income as well, it cannot be further suggested that administrative expenditure to the extent to which it relates to producing tax free income should be vulnerable to being disallowed u/s. 14A. Unless an assessee is found to have incurred any particular expenditure in relation to income which does not form part of total income, there can be no question for making disallowance u/s.14A. Most of the investments of the assessee company are carried forward from previous years, which are invested for as long term investments and do not require regular monitoring. The investments were made out of own funds in the earlier years. There was only a small investment made during the year out of own funds and*

*that also, we had not received any exempt dividend income from the said investment during the year. The borrowings on which interest expense are incurred were used for specific purpose for which the funds were borrowed. Since there is no major reshuffling of the investment made from which exempt dividend income has been earned and there is no direct expenditure incurred for earning of dividend income except as that disallowed by the assessee company, no disallowance should be made under Rule 8D(iii) as well.”*

7. However, Ld. PCIT rejected the arguments of the assessee and observed that the contentions raised by the assessee (supra) necessitate re-verification of the matter in its entirety by the Assessing Officer. Hence, the issue under consideration was restored by Ld. PCIT to the file of the AO for fresh adjudication at his end.

8. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

9. Shri Yogesh Shah, the Ld. Counsel for the assessee submitted that during the assessment proceedings, the Assessing Officer has raised the issue relating to deduction under section 14A of the Act and the assessee has submitted its reply. Therefore during the assessment stage, the Assessing Officer has examined the issue under consideration. The Ld. Counsel also submitted that although the Assessing Officer did not specially mention the issue in his assessment order, however since the assessee has submitted its reply during the assessment proceedings before the Assessing Officer, therefore the Assessing Officer after examining of the issue relating to section 14A did not raise any further question and accepted the claim of the assessee. During the assessment proceedings, the assessee has also submitted its reply which is placed at paper book page no.25 about justification of non-applicability of the provision of section 14A read with rule 8D of Income Tax Rules. Therefore, Ld. Counsel contended that the issue under consideration has been examined by Assessing Officer and applied his mind and taken possible view, therefore order passed by the Assessing Officer should not be erroneous or prejudicial to the interest of Revenue. The Ld. Counsel further pleaded that assessee has its own sufficient funds, out of which the investments were made, therefore there should not be any disallowance under section 14A of the Act. The Ld. Counsel submitted that disallowance

under section 14A has not been made by the Assessing Officer as the assessee has submitted details and documents and computation under section 14A of the Act in regular assessment proceedings, therefore just because the Assessing Officer has not brought these facts in the assessment order, does not mean that order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, Ld. Counsel submitted that the investment in shares and securities which were yielding tax free income were made from own funds, there is no any specific borrowings for investments in shares and securities, therefore addition under Rule 8D r.w.s.14A, should not be made, and Assessing Officer has taken possible view, therefore order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

10. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that assessee has not filed any break up of expenses under section 14A before the Assessing Officer. Before the Assessing Officer, the assessee only mentioned that it has sufficient own funds and therefore disallowance under section 14A is not attracted. The Ld. DR pointed out that it is necessary for the assessee to file the computation and to explain the Assessing Officer that why the addition under section 14A is not attracted. The Ld. DR also pointed out that Assessing Officer has not raised this issue in the notice under section 142(1) of the Act and there is no enquiry has been made by the Assessing Officer. Therefore, Assessing Officer has not carried out the examination of the items, related to section 14A of the Act, thus, Assessing Officer failed to apply the provision of section 14A of the Act. Before the Assessing Officer, the assessee has not submitted details and documents in supporting of exempted income, they simply stated before the Assessing Officer that it is out of own funds which is not sufficient, therefore Ld. DR pointed out that it is a matter of lack of complete enquiry and Assessing Officer has blindly allowed the claim of the assessee without application of mind.

11. However, in rejoinder the Ld. Counsel submitted that Assessing Officer has adopted one of the possible view and the judgement of the jurisdictional

High Court should be given preference as compared to the judgment cited by the Ld. DR for the Revenue.

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. PCIT and other material brought on record.

13. We note that assessee received exempt dividend income of Rs.4,32,25,625/- during the year under consideration and made suo-moto disallowance of Rs.4,52,000/- towards salary of employee and demat charges attributable towards earning tax free income in return of income. As required by AO during course of hearing, appellant vide letter dated 22/12/2017 justified non-applicability of section 14A r.w.s 8D in assessment proceedings. AO, after application of mind, concluded that disallowance made in return of income was proper and no further disallowance was required. The AO took one of the possible views and so the order passed is not erroneous or prejudicial to the interest of revenue since there is no lack of inquiry or lack of application of mind by AO. The Ld. Counsel relied on the following judgments:

- ❖ *Gujarat HC in Deep Industries Ltd [2016] 67 taxmann.com 6*
- ❖ *Karnataka HC in CIT v Chemsworth (P.) Ltd [2020] 119 taxmann.com 358*
- ❖ *Delhi HC in CIT v. DLF Ltd [2013] 31 taxmann.com 158*
- ❖ *Bom HC in CIT v Future Corporate Resources Ltd [2021] 132 taxmann.com 173*
- ❖ *Delhi ITAT Bench in the case of ETT Ltd v CIT 112 taxmann.com 321*

All investment from which dividend income is earned, was made in earlier years, interest free own funds available with appellant. Hon'ble ITAT in assessee's own case, from A.Y. 1992-93 till AY 1995-96, 2003-04 till AY 2006-07 held that company had sufficient surplus funds, no additions u/s 14A Rule 8D were made and have accepted disallowance made by company u/s 14A of the Income-tax

Act. Therefore, considering the above facts, the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

14. The judicial precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue "**unless the view taken by the Assessing Officer is unsustainable in law**".

15. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, we note that in assessee's case under consideration, there was only

a small investment made during the year out of own funds and from that also assessee had not received any exempt dividend income from said investment during the year. Apart from this, most of the investment of the assessee-company are carry forward from previous year which are invested for a long term investments do not require regular monitoring. Therefore, we note that assessee company has not earned any exempt income during the assessment year under consideration, since the assessee has not earned any exempt income, therefore, no disallowance is attracted under section 14A r.w.r. 8D. Hence, we note that Assessing Officer has examined the issue under consideration and took a plausible view that the addition should not be made in assessee's case under consideration as there is no exempt income so no disallowance. Hence, order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue. Therefore, we quash the order passed by the Ld. PCIT under section 263 of the Act.

16. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 22/02/2023 by placing the result on the Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सुरत /Surat

दिनांक/ Date: 22/02/2023

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat