

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

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

**ITA No. 256/Rjt/2019
Assessment Year 2016-17**

Smt. Nirmalaben V. Patel, “Satya”, Pandit Nehru Marg; Solitaire; Indira Gandhi Marg;, Jamnagar PAN: AELPP2575G (Appellant)	Vs	The ACIT, Circle-1, Jamnagar (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.
Revenue by: Shri K.L. Solanki, Sr. D.R.**

Date of hearing : 31-10-2023
Date of pronouncement : 10-11-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee’s appeal for A.Y. 2016-17, arises from order of the CIT(A), Jamnagar dated 22-12-2018, in proceedings under section 250 of the Income Tax Act, 1961; in short “the Act”.

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

“1. Ld. CIT Appeal Jamnagar Erred on law as well as on fact to Partially confirm the Order of ld AO to retain addition of Rs.493268/- u/s. 14A i.e. difference between addition made by AO Rs.1019529/- (Arbitrary working of disallowance u/s. 14A) Less arbitrary retained by HON CIT A amounting to Rs.493268/- hence addition made by AO and partly retained by CIT(A) is prejudicial and illegal and contrary to the fact of the case hence Rs 493268/- retained by CIT Appeal from addition made by AO amounting to Rs.493268/- may be deleted.

2. Any other grounds presented with the permission of your honor at the time of hearing.”

3. The brief facts of the case are that during the course of assessment, the Assessing Officer observed that assessee had paid interest of Rs.1,02,07,025/- on unsecured loans during the year under consideration. Further, the Assessing Officer observed that at the same time, the assessee had earned exempt income in the form of dividend amounting to Rs. 4,93,268/- from shares and mutual funds. As per the Assessing Officer, the provisions of section 14A of the Act are applicable to the case of the assessee. The Assessing Officer, on the basis of material available on record, worked out the disallowance at Rs. 10,19,529/- u/s. 14A of the Act since as per the Assessing Officer, the assessee had paid huge interest of Rs. 1,02,07,028/- to various persons on unsecured loans during the year under consideration. As per the Assessing Officer, though it is not denied that the assessee had interest free capital to the tune of Rs. 5.69 crores, however, it was not practically possible for the assessee to precisely state as to which funds have been was utilized and where. As per the Assessing Officer, it was not possible for the assessee to prove it's contention that interest free funds have been utilized for making investment for the purposes earning

exempt income, since, assessee was having mixed funds. Accordingly, the Assessing Officer made a disallowance of Rs. 10,19,529/- u/s. 14A of the Act.

4. In appeal, CIT(A) partly allowed the appeal of the assessee by restricting the disallowance u/s. 14A of the Act to the amount of exempt income earned by the assessee i.e. 4,93,268/-. While partly allowing the appeal of the assessee, the Id. CIT(A) made the following observations:-

“This entire finding of the AO as given in the assessment order for making disallowance u/s. 14A of the Act are found to be tenable. The fact is that the appellant as per her submission as filed through tapal has stated that she had invested her own fund along with the borrowed fund on which she had got taxable income of Rs. 38,75,849/-. As per appellant due to this specific product mix of earning, she had interest income of Rs. 1,40,82,874/- and she had paid interest of Rs. 1,02,07,025/- and as a result of which she had net taxable interest income of Rs. 38,75,849/- (i.e. Rs. 1,40,82,874/- - Rs. 38,75,849/-). The appellant in her submission has furnished the details of sources of fund and application of fund in the form of a chart which is reflected on page no. 1 of such submission. The appellant has submitted that she had her own fund and which was almost 4.55 times more than the fund invested and income of which was exempted. But this submission of the appellant is not found to be tenable as stated above. The appellant herself has admitted that she had invested her own fund along with the borrowed fund on which she had got more taxable income from interest. Thus the fact is that the appellant had also invested the borrowed fund on which interest was paid by her to the various parties along with her own fund. Considering this fact it can be said that provision of section 14A are not applicable to the case of appellant. The appellant has received dividend income of Rs. 4,93,268/- on investment in shares and mutual fund and such dividend income of Rs. 4,93,268/- is exempted income. The admitted fact is that the interest bearing fund as well as

appellant's own fund have been invested and therefore, section 14A of the Act is applicable to the case of the appellant. However, the exempt income of the appellant is only to the extent of Rs. 4,93,268/- and therefore, the disallowance of Rs. 10,19,529/- as made by the AO u/s. 14A of the Act is required to be reduced to such exempted income of Rs. 4,93,268/-. This is in view of the fact that the disallowance u/s. 14A of the Act cannot exceed the exempt income as earned by the appellant on the investment made. In view of this the addition of Rs. 10,19,529/- as made by the AO u/s. 14A r.w.r 8D is reduced to Rs. 4,93,268/-. Thus the ground of appeal no. 2 and 3 of the appellant are partly allowed.

5. The assessee is in appeal before us against the aforesaid appeal passed by the Id. CIT(A) confirming the disallowance u/s. 14A of the Act to the extent of exempt income earned by the assessee. The counsel for the assessee pointed out that during the impugned year under consideration, the assessee was admittedly having interest free funds to the tune of Rs. 5.69 crores. It was also submitted that the assessee had earned interest income of Rs. 1,40,82,874/- and she had paid interest of Rs. 1,02,07,057/- as a result of which she had offered net taxable interest income of Rs. 38,75,849/- (Rs. 1,40,82,874/- less Rs. 38,75,849/-). The Id. counsel for the assessee submitted that the assessee was having own interest free funds which were almost 4.55 times more than the funds invested and income on which was exempted. The Id. counsel for the assessee submitted that it is well settled law that once the interest free funds available with the assessee are in excess of investments made by the assessee to earn exempt, then it has be presumed that assessee's own interest free funds were utilized to earn exempt income by the assessee. Accordingly, looking into the facts of the instant case, it was submitted that no disallowance was called for u/s. 14A of the Act in the instant case.

6. In response, the ld. Departmental Representative relied upon the observations made by the Assessing Officer and ld. CIT(A) in their respective orders.

7. We have heard the rival contentions and perused the material available 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.

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

Order pronounced in the open court on 10-11-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 10/11/2023

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,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot