

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.14/Ahd/2023
Assessment Year: 2014-15**

TML Industries Limited, 601-B Tower Alkapuri Arcade, Vadodara – 390 007. Gujarat [PAN – AABCT 0793 K]	Vs.	Income Tax Officer, Ward – 2(1)(4), (Now DCIT, Circle – 2(1)(1)), Baroda.
(Appellant)		(Respondent)
Assessee by	Shri Vimal Desai, AR	
Revenue by	Shri Pratik Sharma, Sr. DR	
Date of Hearing	21.05.2024	
Date of Pronouncement	30.05.2024	

ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 25.07.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2014-15.

2. The Assessee has raised the following grounds of appeal:-

- “1. On the facts and the circumstances of the case the Hon’ble CIT(A) has erred in making a disallowance of Rs.6,16,295/- under Section 14A on the erroneous plea that the appellant has utilized the borrowed fund for making investment in shares.*
- 2. On the facts and circumstances of the case, the Hon’ble CIT(A) has erred in making the addition in book profit under section 115JB on account of disallowance made under Section 14A*

3. *On the facts and the circumstance of the case the Hon'ble CIT(A) has erred in disallowing Rs.4,34,150/- paid to the farmers as ex-gratia, on an erroneous plea that the expenditure does not have any connection with the business activities carried out by the appellant."*

3. Ground no.1 - Disallowance under Section 14A of Rs.6,16,295/-. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and selling of chemicals, pesticides and power generation through Wind Mills. During the year under consideration, the assessee filed its return of income declaring total income of Rs. Nil after adjustment of carry forward of losses of Rs.2,07,62,086/-. During the year under consideration, the assessee made investments, the income from which was claimed as exempt under Section 10 of the Income Tax Act, 1961. The assessee claimed exempt income to the tune of Rs.3,36,810/- during the year under consideration. Against the same, the assessee *suo moto* disallowed a sum of Rs.44,250/- under Section 14A read with Rule 8D of the Income Tax Rules, 1962 towards administrative expenses incurred for such exempt income. During the course of assessment proceedings, the assessee was asked to provide working of disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules. Accordingly, the Assessing Officer disallowed a sum of Rs.6,16,295/- under Section 14A of the Act (after reducing the amount of Rs.44,250/- which has been disallowed by the assessee in its return of income)

4. The assessee filed appeal against its addition. The CIT(A), however, dismissed the appeal of the assessee with the following observations:-

"During the course of assessment proceedings, the AR of the appellant was asked to provide the working of disallowance u/s. 14A r.w. Rule 8D. In response to the same, the AR of the appellant filed a reply dated 02-12-2016 showing the working of disallowance u/s. 14A r.w. Rule 8D. As per the working of the appellant, the disallowance u/s. 14A comes to Rs.6,16,295/-. Based on the working of the appellant, the AO has disallowed Rs.6,16,295/-. Thus, the appellant himself produced the working of correct disallowance u/s. 14A. Now during the course of appellate proceeding, the appellant has not filed any submission

*showing or reasoning the working of 14A is wrong. As the appellant himself produced the working of disallowance during the course of assessment proceedings, I have no hesitation to confirm the action of the AO. **Ground No.1 is dismissed.***

5. Further, before the CIT(A), the assessee also contended that the Assessing Officer has erred in making the addition to book profit under Section 115JB on account of disallowance made under Section 14A of the Act. The CIT(A) also dismissed this contention of the assessee with the following observation:-

“As per explanation below Section 115JB for the purpose of this Section 'book profit' means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-Section (2) as increased by -

(f) the amount or amounts of expenditure relatable to any income to which section 10 applies.

During the course of assessment proceedings, the appellant submitted working of disallowance u/s.14A r.w. Rule 8D and worked out disallowance of Rs.6,16,295/- u/s.14A. Therefore, disallowance u/s. 14A as worked out above was added to the book profit computed by the appellant. Therefore, the correct calculation of book profit according to the provisions of Section 115JB of the Act as under.

Book profit u/s.115JB as per the computation	Rs.1,36,02,502/-
Add: Disallowance made u/s.14A of the Act	Rs. 6,16,295/-
Book Profit u/s.115JB	Rs.1,42,18,797/-

The AO has correctly computed book profit u/s.115JB. The Action of the AO is confirmed. **Ground No.2 is dismissed.**”

6. The assessee is in appeal before us against both the grounds of appeal which were dismissed by the Ld. CIT(A). The first contention of the Counsel for the assessee before us was that the assessee had claimed a sum of Rs.3,44,310/- as exempt income during the year under consideration. The Counsel for the assessee submitted that out of total investment yielding exempt income, no fresh investments were made by the assessee during the year under consideration. It was submitted that it is well settled law that the amount of disallowance under Section 14A of the Act read with Rule 8D of the

Income Tax Rules cannot exceed the amount of exempt income earned by the assessee, which was Rs.3,44,310/-. Further, the Counsel for the assessee submitted that during the year under consideration, the assessee had substantial interest free funds available with the assessee and, therefore, no disallowance was called for in respect of interest expenses under Section 14A of the Act read with Rule 8D of the Income Tax Rules. The Counsel for the assessee drew our attention to page no.32 of the Paper Book and submitted that on identical set of facts, the ITAT in the assessee's own case for Assessment Years 2008-09, 2009-10 & 2010-11 has allowed relief to the assessee on this issue. Secondly, the Counsel of the assessee drew our attention to the Balance Sheet for the impugned year under consideration and submitted that investments made by the assessee were for a sum of Rs.87,84,952/- whereas interest free funds available with the assessee were Rs.17,48,68,378/- (sum total of share capital and reserves and surplus of the assessee for the year under consideration) and accordingly the investments made by the assessee was only 5% of the interest free funds available with the assessee. The Counsel for the assessee submitted that it is a well settled law that in case the assessee is having sufficient interest free funds, then no disallowance is called for under Section 14A of the Act read with Rule 8D of the Income Tax Rules.

7. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and the Ld. CIT(A) in their respective orders.

8. We have heard the rival contentions and perused the material on record. We observe that firstly in this case, the assessee has been able to demonstrate that the assessee was having substantial interest free funds at its disposal which were far in excess of the investments made by the assessee in fund yielding exempt income. In the case of **PCIT vs. Gujarat Flurochemicals Limited, 155 taxmann.com 135 (Guj)** the Hon'ble High Court held that where the assessee had mixed funds, then the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules do not get

attracted atomically. In the case of **Gujarat State Energy Generation Limited, 117 taxmann.com 58 (Ahmedabad Tribunal)**, the Ahmedabad ITAT held that where “funds of assessee exceeded amount of investment in shares, no disallowance of interest on borrowed funds can be made by the Assessing Officer by invoking provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules. Therefore, it is well settled law that once the assessee is having sufficient interest free funds, which are far in excess of investments made by the assessee which yielded exempt income, then no disallowance can be made under Section 14A of the Act read with Rule 8D of the Income Tax Rules. Further, in the case of **Gujarat Flurochemicals Limited (supra)** the Hon’ble Gujarat High Court has also held that the disallowance made under Section 14A of the Act could not exceed the exempt income. Further, the Hon’ble Gujarat High Court has also held in the aforesaid decision that no addition in book profit could be made on the basis of calculations worked out under Section 14A of the Act. Further, it would also be relevant to reproduce the relevant extract of the decision of the ITAT in assessee’s own case for Assessment Years 2008-09, 2009-10 & 2010-11 in ITA Nos.1911 & 1912/Ahd/2016 and ITA Nos.2249 & 2269/Ahd/2013, wherein the ITAT allowed the identical issue in favour of the assessee with the following observations:-

“18. *We have gone through the relevant record and in the impugned order and we have heard both the parties. As we can see, the balance sheet in paper book at page no. 19 appellant having reserve and surplus of Rs. 262190965/- and he has investment of Rs. 53132382/-. It is evident from the balance sheet, that appellant is having surplus own funds then the investment. In support of it contention, ld. A.R. cited following series of judgments:*

1. **Reliance Utilities and Power Ltd. 313 ITR 340 (Bombay HC) (2009)**
"If there are funds available both, interest-free and over draft and I or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments"
2. **DIT .v. BNP Paribas SA (214 Taxman 548) (Bom HC) (2013)**
"Where assessee made investment in shares out of its own funds and claimed dividend income to be exempt under section 10(33), disallowance made by Assessing

Officer under section 14 A. on plea that assessee had incurred interest expenses in relation to exempt dividend income was not justified"

3. CIT .v. UTI Bank Ltd. (215 Taxman 8(Mag.)) (Guj HC) (2013)

"If 'there are sufficient interest free funds to meet tax free investments, they are presumed to be made from interest free funds and not loaned funds and no disallowance can be made under section 14A."

4. CIT .v. Gujarat State Fertilizers & Chemicals Ltd. (101 DTK 175/ 217 Taxman 229/358 ITR 323) (Guj HC) (2013)

"Where assessee had more funds than investment in shares, and borrowed funds were not proved to be used for same, disallowance of 10 per cent of exempted dividend income was unsustainable "

5. CIT .v. Torrent Power Ltd. (363 TTR 474 / 222 Taxman 367) (Guj HC) (2014)

"Where it was apparent from records that assessee had sufficient funds for making investments in shares and interest free bonds and it had not used borrowed funds for such purpose, Assessing Officer was not justified in invoking provisions of section 14A. in order to disallow one per cent of interest expenses incurred for earning exempt income"

6. CIT v. Hitachi Home & Life Solutions (I.) Ltd. (221 Taxman 109) (Guj HC) (2014)

"Where assessee's interest free funds exceeded investment made for earning exempted dividend income, disallowance under section 14A. was not justified"

19. *In our considered opinion, this case is squarely covered by the abovementioned judgment, therefore, we allow the appeal of the appellant."*

9. Accordingly, looking into the instant facts and judicial precedents highlighted above, no disallowance is called for under Section 14A of the Act read with Rule 8D of the Income Tax Rules. Further, in view of the decision of Hon'ble Gujarat High Court in the case of Gujarat Flurochemicals Limited (supra), no addition in book profit could be made on the basis of disallowance made under Section 14A of the Act. Ground nos.1 & 2 of the assessee's appeal are thus allowed.

10. Ground no.3 – disallowance of Rs.4,34,150/- paid to Farmers under Section 37 of the Act.

11. The brief facts in relation to this ground of appeal are that the assessee paid a sum of Rs.4,34,150/- to the farmers allegedly on account of damages/losses suffered by the Farmers due to chemicals run by the assessee company in the vicinity of the assessee firm and residential premises of such farmers. However, the Assessing Officer disallowed the claim of the assessee on the ground that the aforesaid expenditure has not been incurred wholly and exclusively for the purposes of business carried on by the assessee and, therefore, the same is not allowable under Section 37 of the Act.

12. In appeal, the CIT(A) confirmed the addition on the ground that the assessee has not produced the details of expenses incurred and no evidence was furnished of payment of aforesaid amount to farmers and, therefore, he confirmed the addition in the hands of the assessee with the following observations:

*“The appellant has paid Rs.4,34,150/- to the farmers on account of damages/losses suffered by the farmers due to chemicals run by the appellant company in the vicinity of the firm and residential premises of such farmers. The appellant has not produced what are the chemicals produced by it, effects of chemical on soil, extent of land spoil and the evidence of payment to the farmers etc. either during the course of assessment proceedings or during the course of appellate proceedings before me. In the absence of satisfactorily reason, the amount shown to have being paid to the farmers of Rs.4,34,150/- cannot be sustained. The action of the AO is upheld. **Ground No.3 is dismissed.**”*

13. The assessee is in appeal before us against the order passed by the CIT(A), confirming the addition in the hands of the assessee. Before us, the Counsel for the assessee reiterated the submissions made before the Lower Authorities. However, on going through the facts of the instant case, we observe that the CIT(A) has correctly observed that the assessee has not given precise details of what damage has been caused to the Farmers as a result of which the aforesaid payment was made. The assessee has not given the details of what chemicals are produced by it and what effect such chemicals has on the soil of the Farmers and, therefore, in the absence of any supporting

evidences with respect to the claim of the aforesaid expenditure the same cannot be allowed to the assessee.

14. On going through the facts of the instant case, we find no infirmity in the order of the Ld. CIT(A). We observe that the assessee has not furnished any supporting documents in support of the claim of the aforesaid expenditure and accordingly, the CIT(A) has correctly confirmed the addition in the hands of the assessee. Ground No.3 of the assessee's appeal is thus dismissed.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 30th May, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SIDDHARTHA NAUTIYAL)
Judicial Member

Ahmedabad, the 30th day of May, 2024

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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