

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.2147/Ahd/2017  
Assessment Year : 2014-15

The ACIT Circle-2(1)(2) Ahmedabad	Vs	Kunvarji Finance Pvt.Ltd. Block B, 1 <sup>st</sup> Floor Siddhi Vinayak Tower Off S.G. Highway Mouje Makarba, Ahmedabad PAN: AAACK 8759 R
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Bandish Soparkar, AR
Revenue by :	Smt. Malarkodi R., Sr.DR

सुनवाई की तारीख/Date of Hearing : 20/06/2024  
घोषणा की तारीख /Date of Pronouncement: 02/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

The present appeal is filed by the Revenue against the order of the Ld.Commissioner of Income Tax (Appeals)-2, Ahmedabad (hereinafter referred to as "the Ld.CIT(A)"), dated 04/07/2017, arising out of the assessment order passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 19/12/2016 relevant to the Assessment Year (AY) 2014-15.

**Facts of the case:**

2. The return of income was filed by the assessee on 29/09/2014 declaring total Income of Rs. 1,07,85,290/-. The revised return of income was filed by the assessee on 21/11/2014 declaring total income of Rs.95,18,550/-. The return of income was processed u/s. 143(1) of the Act. The case was selected for scrutiny and the same was completed by the AO by passing an order u/s.143(3) of the Act, making addition on account of disallowance u/s.14A read with Rule 8D of the Income Tax Rules, 1962 of Rs.35,76,934/-, addition on account of treating loss of trading in shares Rs.1,71,03,200/- as non-genuine and fabricated and addition on account of disallowance of speculation loss of Rs.13,45,857/-.

2.1. The assessee filed an appeal before the Ld.CIT(A), who partly allowed the appeal restricting disallowance u/s.14A to Rs.13,970/- and deleted the additions on account of loss of trading in shares and speculation loss.

3. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us with the following grounds of appeal:

*"1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.35,62,964- u/s. 14A of the Act.*

*1.1. The Ld. CIT(A) has failed to appreciate that investment of Rs.23,68,79,628/- was made in shares during the year, dividend income from which is exempt from tax.*

1.2. *The Ld. CIT(A) has failed to appreciate that since the assessee is not maintaining any separate account from which such investments had been made, the provision of Rule 8D are clearly applicable.*

1.3. *The Ld. CIT(A) has failed to appreciate that the assessee apart from making a bald assertion that it had the interest free funds available for making such investments, has not lead any evidence to prove that it had the necessary interest free cash flow during the time of making such investment.*

1.4. *The Ld. CIT(A) has failed to appreciate that as per Section 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him*

1.5. *The Ld. CIT(A) has erred in facts and in law while deleting the disallowance on the ground that no exempt income had been eared by the assessee from such investment.*

2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,71,03,200/- made by AO on account of unexplained transaction towards loss on sale of shares of Indian Infotech and Software Limited and Shree Shalin Textile Limited?*

2.1 *The Ld. CIT(A) has failed to appreciate that the entire transaction in this penny stock was a ruse to give bogus loss to the assessee and in term give bogus capital gains to the counter party.*

3. *The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.13,45,857/- made by AO on account speculation loss claimed under the head of income from other sources?*

3.1 *The Ld. CIT(A) has failed to appreciate that the transaction being done through stock exchange and payment made through the stock exchange was at best neutral and does not prove the genuineness of the transaction.*

3.2 *The Ld. CIT(A) has failed to appreciate that these penny stocks were thinly traded and there was no marked change in the finances of the said companies which could alter the share prices of these shares so drastically in a period of less than 6 months.*

3.3 The Ld. CIT(A) has failed to appreciate that as per own admission of the assessee, out of total investment of Rs.8.04 crores, strategic investment were of Rs.7.82 crores and other investment were of Rs.22.13 lakhs. Therefore the transaction in crores for these 2 unknown scrips/penny stocks is not a normal transaction.

3.4 The Ld. CIT(A) has failed to appreciate that the turnover which was shown by the assessee, and which has been reproduced by the Ld.CIT(A) was on account of derivative and option trading and not on account of actual purchase and sale of delivery-based shares.

3.5 The Ld. CIT(A) has failed to appreciate that in income Tax assessment proceedings, principle of preponderance of probability and normal human conduct/behaviour is applicable, which has been reiterated by the Hon'ble Supreme Court in various decisions.

3.6 Without prejudice to the aforesaid, the assessee being a company, such losses being losses incurred on trading of shares had to be treated as speculation loss in view of explanation to section 73 of the I.T. Act and, therefore, disallowable.

4. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."

#### **On Ground No.1**

4. This ground relates with the disallowance of Rs. 35,76,934/- made by AO u/s.14A r.w.Rule 8D and restricted by the Ld.CIT(A) to Rs.23,970/-. The facts of the issue are such that during the year under consideration, the assessee has earned Dividend Income of Rs.23,970/- as exempt income. As claimed by the assessee, the company has not made any direct expense to earn this exempt income and has not borrowed any funds specifically to fund the acquisition of such investments. It also has not incurred any administrative expense to earn this exempt income. The assessee on its own deducted Rs.10,000/- on ad-hoc basis considering the same is spent for

earning exempt income. Break-up of the total amount of capital assets/investments capable of yielding exempt income was as follows:

Particulars	A.Y. 2014-15 in Rs.	A.Y. 2013-14 in Rs.
Strategic Investment	7,82,14,632	7,82,13,731
Other Investment	22,13,075	77,13,075
<b>Total</b>	<b>8,04,27,707</b>	<b>8,59,26,806</b>

The Value of assets and the amount of own funds available with the assessee was as under:

Particulars	As at 31-3-2014 in Rs.	As at 31-3-2013 in Rs.
<b>Value of Assets</b>	<b>23,68,79,628.00</b>	<b>19,82,24,725.00</b>
Share Capital	24,58,500.00	24,58,500.00
Reserves and Surplus	16,90,54,097.95	16,32,40,339.81
<b>Total Interest free funds</b>	<b>17,15,12,597.95</b>	<b>16,56,98,839.81</b>
<b>Total Investments</b>	<b>8,04,27,707.00</b>	<b>8,59,26,806.00</b>

4.1. Interest expenses debited to profit and loss account for the A.Y. 2014-15 was Rs.82,93,955/- The AO, applying Rule 8D calculated the amount of disallowance u/s.14A at Rs. 35,86,934/-.

4.2. During the course of assessment and appellate proceedings, the assessee contented that the investment in equity shares of group companies was made in order to have controlling stake in the group companies and additional investment was made from internal accruals of the company. Regarding administrative expenses the assessee submitted that the entire

administrative expenditure incurred during the current year is attributable towards functioning of everyday business and not for earning any tax-free income. Further, the assessee submitted that the expenditure debited to the Profit & Loss Account are incurred purely for the purpose of business, hence cannot be considered to have been incurred towards any investment activity. These expenses are required to be incurred, irrespective of the fact that whether any investment activity is carried out by company or not. Even in absence of any active business activity, majority of these expenses are required to be incurred, which are necessary for day to day running of the business. Hence, these expenses have no nexus with the investment activity of the company, thus no disallowance of any administrative expenses should be made only on presumption of incurrence thereof for the purpose of earning tax free income. Further, it was submitted that, in recent era, it does not require any specific administrative efforts for earning dividend income. The assessee is not required to deposit dividend warrant but is directly credited to bank account of assessee through ECS for which no specific administrative cost is required. The Assessing Officer, however, not satisfied with the submission of the assessee, calculated the disallowance u/s 14A as determined in accordance with Rule 8D.

4.3. During the course of proceedings before the Ld.CIT(A), the assessee placed reliance on some judicial proceedings. The Ld.CIT(A) considering the contention of the assessee restricted the disallowance to exempt income of Rs.23,970/-. He also relied on the decision of the Ld.CIT(A) in case of assessee's own case of earlier years. The relevant para of his order is reproduced hereunder:

*“3.5. In view of the above facts of the case and the fact that identical issue on similar lines has been decided by this office in the immediately preceding years i.e. A. Y. 2013-14 dated 26/05/2017, A.Y. 2012-13 dated 17/04/2016 and also in A. Y. 2011-12 dated 20/08/2015, following the same and on merits, the disallowance u/s.14A r.w. Rule-8D is restricted to Rs.23,970/- i.e. exempt income in the form of dividend received. Since the appellant himself has suo moto made the disallowance of Rs.10,000/- on adhoc basis in computation of total income, therefore, the remaining disallowance to the extent of Rs.13,970/- is found correct and the same is confirmed and relief is granted for the balance disallowance. In other words, the disallowance u/s. 14A is confirmed to the extent of Rs.13,970/-.*

*The related grounds of appeal are accordingly partly allowed.”*

5. The Ld.Counsel for the assessee reiterated the points submitted before the AO and the Ld.CIT(A) and placed reliance on the judgement of **the Hon'ble Gujarat High Court in the case of PCIT v. Gujarat Flurochemicals Ltd. reported in (2023) 459 ITR 242 :: 295 Taxman 200 (Guj.)**.

6. On the other hand, the Ld.Departmental Representative relied on the order of AO and referred to the Circular No. 05/2014 dated 11/02/2014. As per the Circular even if no exempt income is earned by the assessee in a particular year provisions of section 14A read with Rule 8D are applicable for that year.

7. We have heard the rival contentions and perused the material available on record. We noted the AO's reliance on Rule 8D to calculate the disallowance without considering the specific facts of the case, particularly that the assessee's investments were made from interest-free funds and that no direct expenses were incurred to earn the exempt income. We considered the assessee's submission that the investments were strategic and funded

through internal accruals. The administrative expenses were attributed to the normal functioning of the business and not specifically for earning tax-free income. We also took into account the Ld.CIT(A)'s consistent findings in favor of the assessee in previous years (AYs 2013-14 & 2012-13, and AY 2011-12) and the judgment of **PCIT v. Gujarat Flurochemicals Ltd.(supra)**, which has supported in restricting the disallowance to the actual exempt income earned. The Hon'ble Gujarat High Court emphasized the necessity of establishing a nexus between the expenditure incurred and the earning of exempt income. It held that mere presumptions cannot form the basis of disallowance under section 14A. The Court referred to the **judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)**, where it was held that the primary condition for applicability of Section 14A is that the expenditure should have been actually incurred in relation to exempt income. The Court also noted that the AO must record reasons for not being satisfied with the correctness of the claim of the assessee regarding the expenditure incurred in relation to exempt income before proceeding to make a disallowance under Rule 8D. It was observed that in the present case, the AO had mechanically applied Rule 8D without recording the requisite satisfaction, thereby violating the procedural requirement stipulated under Section 14A(2) of the Act.

7.1. The Circular No. 05/2014 dated 11/02/2014, cited by the Revenue, suggests applying Section 14A even when no exempt income is earned, but this principle was deemed inapplicable to the facts of the current case.

**Conclusion:**

8. We, therefore, uphold the Ld.CIT(A)'s decision to restrict the disallowance under Section 14A to the exempt income earned by the assessee, amounting to Rs.23,970/-. Consequently, the Revenue's appeal on this ground is dismissed.

### **On Ground No.2**

9. This ground pertains to addition of Rs.1,71,03,200/- made by AO on account of loss on sale of shares of Indian Infotech and Software Ltd. (loss of Rs.44,21,400/-) and Shree Shalin Textile Ltd. (loss of Rs.1,26,81,800/-) and treating the same as unexplained transaction.

10. The brief facts of the issue are such that during the year under consideration, the assessee had incurred a loss on sale of share of these two shares. The AO, on the basis of data available on AST and information received from higher authorities, issued a show-cause notice to the assessee as to why this loss claimed on sale of these penny stock should not be disallowed. In response to the said notice, the assessee vehemently contented that such action sought to be made is merely based on suspensions and surmises. The assessee further stated that the company is doing business of trading in equity shares, equity derivatives, currency derivatives, etc. and the company is an established player in the market over the years. With respect to impugned transactions, the assessee stated that the company had purchased the shares considering multiple aspects of the company including the last reported financials and price movement during last quarter before purchase. The Company purchased the shares from screen-based trading of the exchange from registered broker.

supported by impeccable evidence such as Contract note cum bills in respect of sale of shares of Shree Shaleen and India Info line, all the government dues viz. STT, Transaction Tax etc. were duly paid on the sale of the said shares, Copy of the Demat statement of the assessee for F.Y. 2013-14 clearly evidencing that the delivery of the shares had in fact taken place, Ledger Account of stock broker in the books of the assessee F.Y. 2013-14, copy of the relevant portion of the bank statement reflecting the receipt of sale consideration, Copy of the relevant portion of the bank statement evidencing purchase of shares being made via banking channels, etc. The assessee also placed reliance on some judicial pronouncements however, the AO not being satisfied with the reply of the assessee, concluded that the loss claimed on sale of two shares as non-genuine and fabricated and disallowed the loss of Rs. 1,71,03,200/-.

10.1. While deleting the disallowance, the Ld.CIT(A) concluded that the disallowance has been made by the AO on the basis of information received from the Investigation Wing, Kolkata without making further inquiries and rebutting the details and evidence submitted by the assessee. He further concluded that no further evidence has been brought on record to prove that the impugned transactions were sham. The Ld.CIT(A) also observed that nowhere in the report of investigations the name of assessee and his broker was mentioned and no information on the basis of which the addition was made was made available to the assessee for cross verification. The Ld.CIT(A) recorded that necessary documents like contract notes cum bills, Dmat statements, ledger account of broker and bank statements evidencing purchase and sale of shares were placed on records by the assessee. The Ld.CIT(A) placed on reliance of some judicial

pronouncements including that of **Hon'ble Gujarat High Court in case of Maheshchandra G. Vakil in 40 taxmann.com 326.**

11. During the course of hearing, the Ld.Counsel for the assessee reiterated the facts and took us through the order of the Ld.CIT(A) and placed reliance on some judicial pronouncements including that of **Hon'ble Gujarat High Court Judgment in the case of Prudent Finance (P) Ltd. (2013) 43 taxmann.com 317.**

12. On the other hand, the Ld.DR relied on the order of AO.

13. We have heard the rival contentions and perused the material available on record. The AO disallowed the loss claimed by the assessee on the sale of shares amounting to Rs.1,71,03,200/- on the ground that transactions were non-genuine. The AO's conclusion was primarily based on data from the AST and information from higher authorities, particularly the Investigation Wing, Kolkata. The AO contended that these transactions were fabricated and lacked authenticity. The Ld.CIT(A) found that the AO's disallowance was based solely on the information from the Investigation Wing without conducting independent inquiries or verifying the substantial evidence provided by the assessee. Furthermore, the Ld.CIT(A) noted that:

- The investigation reports did not specifically name the assessee or their broker.
- The AO failed to provide the assessee with the information on which the addition was based, preventing cross-verification.

- Necessary documents like contract notes, Demat statements, ledger accounts, and bank statements were furnished by the assessee, substantiating the transactions.

13.1. We have also noted the decision of Co-ordinate Bench, relied upon by the counsel of the assessee, in case of **Smt. Meera Alpesh Kanugo, Vadodara vs ITO, Ward-3(1)(3), Vadodara in ITA No. 2130/Ahd/2018**, where the bench had allowed the claim of the assessee on the similar facts. We reproduce the relevant part of the judgment hereunder:

*"20. In the light of the decisions of the Hon'ble Supreme Court in the case of Andaman Timber Industries (supra) and considering the facts in totality, the claim of the assessee cannot be denied on the basis of presumption and surmises in respect of penny stock by disregarding the direct evidences on record relating to the sale/purchase transactions in shares supported by broker's contract notes, confirmation of receipt of sale proceeds through regular banking channels and the demat account."*

13.2. We also observed that the Ld.CIT(A) has dealt with the judgement of Hon'ble Gujrat High Court in case of **CIT Vs. Prudent Finance (P.) Ltd. [2014] 43 taxmann.com 317**. The relevant para of the said judgement is reproduced here:

*"8. Additionally, we also note that necessary entries were made in the account books of both sides, i.e. purchaser and seller and delivery receipts were also passed demonstrating contemporaneous sale and purchase of the shares. It is not even the case of the Revenue that such off market transactions were not permissible. When we find that off market transactions were permitted in law, that there was no evidence to suggest that artificially they were sold at rates lower than the prevailing market rates and we further find that the Assessing Officer could not bring on record any material to show that the transactions were shown to be deliberately back-dated, the findings of the CIT (Appeals) as well as that of the Tribunal, in our opinion, call for no interference."*

14. The Ld. DR has not controverted to the said decision.

15. After careful consideration of the facts, evidence, and submissions by both parties, we uphold the decision of the Ld.CIT(A) to delete the disallowance made by the AO. We concur with the Ld.CIT(A)'s observation that the AO failed to provide substantial evidence to disprove the genuineness of the transactions. We note the following key-points:

- The AO's disallowance was based on information from the Investigation Wing without conducting independent verification or inquiries.
- The assessee provided comprehensive documentary evidence to substantiate the genuineness of the transactions.
- The investigation reports did not specifically implicate the assessee or their broker.
- The AO did not give the assessee an opportunity for cross-verification by failing to share the underlying information.

15.1. Therefore, we dismiss this ground of Revenue's appeal and confirm the deletion of disallowance of Rs.1,71,03,200/- made by the AO on account of loss on the sale of shares.

### **On Ground No.3**

16. This ground relates with disallowance of Rs.13,45,857/- made by AO on account speculation loss claimed under the head "income from other sources". The facts are such that the assessee carries on business under the normal provisions as well as the speculation business for which profit and loss account was worked out separately. The assessee claimed

Rs.13,45,857/- as proportionate depreciation relating to speculation business. AO concluded that the assessee claimed this as speculation loss under the head “income from other sources” and issued show-cause notice that why the same should not be disallowed and added to the income. In response to the said notice, the assessee submitted that the depreciation for speculation business has been appropriately added back in normal business profit and loss calculation and considered in speculation business profit and loss calculation. The AO not satisfied with the explanation offered by the assessee, added this amount relating to depreciation to the total income of the assessee.

16.1. The Ld.CIT(A) after verifying the details submitted by the assessee deleted the addition. While doing so, the Ld.CIT(A) reproduced the computation of income, which is again reproduced hereunder for the sake of clarity:

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>	<i>Remarks</i>
<b><i>Profit from Normal Business</i></b>			
<i>Net profit as per P&amp;L</i>		63,64,497	
<b><i>Add: Items Inadmissible</i></b>			
<i>(vii) Exp related to exempt income</i>	10,000		
<i>(viii) Donation</i>	3,810		
<i>(ix) Amt Disallowance u/s.37</i>	100		
<i>(x) Depreciation as per books</i>	35,69,125		<i>Total depreciation as per books</i>
<i>(xi) u/s.28 to 44DA</i>	<b>13,22,223</b>		<i>Includes:</i> <i>(i) Proportionate depreciation pertaining to speculation</i>

			<i>business</i> Rs.13,45,857/- (ii) <i>Appeal fee</i> 10,000/- and (iii) <i>wealth tax</i> <i>expense</i> Rs.6366/-.
(xii)		49,45,258	
<b>Less: Items Admissible</b>			
(iii) <i>Exempt income</i>	23,970		
(ii) <i>Depreciation as per IT Act</i>	24,67,403		<i>Total depreciation as per IT Act pertaining to normal as well speculation business</i>
(iv) <i>Share of profit from firm</i>	900		
		(24,92,273)	
<b>Profit from normal business (A)</b>		<b>88,17,482</b>	
<b>Profit from Speculation Business</b>			
<i>Net profit as per P&amp;L</i>		20,48,829	
<i>Less: Depreciation</i>		(13,45,857)	
<b>Profit from Speculation Business (B)</b>		<b>7,02,972</b>	
<b>Total business profit (A+B)</b>		<b>95,20,454</b>	

16.2. Based on the findings and conclusion drawn by the Ld.CIT(A), it is evident that the amount of Rs.13,45,857/- does not represent a speculation loss, but rather depreciation related to the speculation business. This depreciation has been separately accounted for by making a corresponding addition to the profits from the normal business, thereby having a nullifying effect on the returned income. As such, the observations made by the Assessing Officer are lack of factual basis. Consequently, this ground raised by the Revenue is dismissed.

17. In the combined result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the Open Court on 2<sup>nd</sup> July, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

Ahmedabad, Dated 02/07/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, SY. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad