

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

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

Sl. No(s)	आयकरअपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलार्थी / प्रत्यर्थी / Appellant	बनाम/vs. Respondent
1.	ITA No. 547/Ahd/2016	2011-12	The Deputy Commissioner of Income Tax, Circle-1(1)(1), Vadodara	Gujarat State Fertilizers & Chemicals Ltd., P.O. Fertilizer Nagar, Dist. Vadodara-391750 PAN No. AAACG7996C
2.	ITA No. 624/Ahd/2016	2011-12	Gujarat State Fertilizers & Chemicals Ltd., P.O. Fertilizer Nagar, Vadodara-391750 PAN No. AAACG7996C	Deputy Commissioner of Income Tax, Circle-1(1)(1), Vadodara
3.	C.O. No. 58/Ahd/2016	2011-12	Gujarat State Fertilizers & Chemicals Ltd., P.O. Fertiliser Nagar, Baroda-391750 PAN No. AAACG7996C	Deputy Commissioner of Income Tax, Circle-1(1), Baroda

Assessee by :	Shri Yogesh Shah, A.R.
Revenue by :	Shri H. Phani Raju, CIT D.R. & Shri V. K, Mangla, Sr. D.R.

सुनवाई की तारीख/Date of Hearing : 13/08/2024
घोषणा की तारीख /Date of Pronouncement: 27/08/2024

आदेश / O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

These cross appeals filed by Revenue and Assessee are passed against the order of CIT(A) - 1 Vadodara for the A.Y. 2011-12. These appeals were decided by the Co-ordinate bench vide common order dated 24-03-2023. The dispute centered around the disallowance of expenses under Section 14A of the Income Tax Act, 1961(hereinafter referred to as "the Act"). In the said common order, Tribunal remanded the matter back to the Assessing Officer (AO) for re-examination and adjudication, particularly concerning the disallowance of administrative expenses under Section 14A. The Tribunal emphasized the need to reconsider the AO's approach, particularly whether current liabilities and provisions should be deducted from the opening and closing stock of current assets.

2. The assessee filed Tax Appeals No. 60 and 82 of 2024 before Hon'ble High Court of Gujarat arising out of ITA No.547/Ahd/2016 and ITA No.624/Ahd/2016 respectively. Special Civil Application No. 578 of 2024 was also filed by assessee against the order passed by the Tribunal in Miscellaneous Application Nos.55 to57/Ahd/2023 dated 23rd August, 2023, whereby the Miscellaneous Applications filed by the assessee are dismissed arising out of the common order dated 24th March, 2023 passed in ITANo.547/And/2016, ITA No.624/Ahd/2016 with Cross Objection No.58/Ahd/2016 in ITA No.247/Ahd/2016.Hon'ble High Court remanded the matter back to Tribunal, qua the grounds related with disallowance u/s 14A.

3. Therefore, the assessee and Revenue both are before us with following limited grounds relating to disallowance u/s 14A:

Revenue's Ground No. 1 in ITA No. 547/Ahd/2016

On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance made out of interest expenses u/s.14A r.w.r. 8D in relation to exempted income of dividend, without taking note that it was up to assessee to adduce evidence that all the borrowings were used for the purposes of the business and it is the assessee's own surplus funds that were invested in the shares earning exempted income.

Ground No. 1 and 2 of Assessee' Cross Objection against ITA No.547/Ahd/2016

- 1. Without prejudice to the claim that no disallowance under Section 14A of the Act is justified in the facts of the case, in the event the ground no.1 of the captioned appeal is decided in favour of department, it is submitted that to arrive at average total assets for computing disallowance as per formula prescribed by Rule 8D, the opening and closing gross block of fixed assets should be considered instead of opening and closing net block of fixed assets as held by the Assessing officer which did not come to be adjudicated by the learned CIT(A) as the principal ground in respect of interest expenditure was held in favour of the assessee. It is submitted that it be so held now.*
- 2. Without prejudice to the claim that no disallowance under Section 14A of the Act is justified in the facts of the case, in the event the ground no.1 of the captioned appeal is decided in favour of department, it is submitted that current liabilities & provisions should not be reduced from the opening and closing balance of current assets as done by the assessing officer for arriving at average total assets of the assessee for computing disallowance as per formula prescribed by Rule 8D which was not adjudicated by the learned CIT(A) as the principal ground in respect of interest expenditure was held in favour of the assessee. It is submitted that it be so held now.*

Assessee's Ground No. 2 in ITA No.624/Ahd/2016

2. The learned CIT(A) erred on facts and in law in upholding disallowance of administrative expenditure made by the Assessing Officer ("AO") in accordance with Rule 8D of the Income-tax Rules, 1962 ("the Rules") read with Section

14A(2) of the Income-tax Act, 1961 ("the Act") even though the appellant had suo-moto made disallowance of proportionate administrative expenditure of Rs.60,276 relating to the exempt income. It is submitted that it be so held now.

2.1. The learned CIT(A) erred on facts and in law in upholding disallowance of administrative expenses made in accordance with Rule SD of the rules read with Section 14A(2) of the Act despite the fact that the AO had not recorded any satisfaction having regard to the books of accounts of the appellant that the claim of the appellant in respect of expenses incurred for purpose of earning exempt income was incorrect. It is submitted that it be so held now.

2.2. The learned CIT(A) ought to have accepted the disallowance of Rs.60,276 made in the return of income however, without prejudice the learned CIT(A) erred on facts and in law in not following the order of the Hon'ble ITAT for AY 2004-05 to 2007-08 and orders of Hon'ble Gujarat High Court confirming such orders in the appellant's own case whereby, in similar facts and circumstances, the Hon'ble ITAT had upheld the disallowance of administrative expenditure of Rs.5 Lacs which was upheld by Hon'ble High Court. It is submitted that it be so held now.

Facts of the Case

4. The facts are such that the AO disallowed the interest expenses of Rs.1,82,91,360/- and administrative expenses of Rs.2,12,49,050/- invoking the provisions of Section 14A by making total addition of Rs.3,95,40,410/- The CIT(A) deleted the disallowance made in respect of the interest expenses of Rs.1,82,91,360/- and confirmed the disallowance on administrative expenses of Rs.2,12,49,050/-, with a direction that for the purpose of arriving at average value of investment under Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'), investment made in TIFERT and National Savings Certificate to be excluded. The tribunal partially allowed the assessee's appeal on this ground, remanding the matter back to the AO for proper verification. While doing so the tribunal emphasized that before making any disallowance under Section

14A, the AO must be satisfied that the claim of the assessee regarding the expenses related to exempt income is not correct. This satisfaction should be clearly recorded in the order. The Tribunal acknowledged the assessee's claim that they had significant own funds available, which were used for making investments and noted that the AO did not sufficiently examine whether the investments yielding exempt income were made from the assessee's own funds or borrowed funds. The Tribunal found that applying Rule 8D mechanically without considering the actual availability of own funds and without recording dissatisfaction with the assessee's claims was not appropriate.

5. The assessee preferred appeals before Hon'ble High Court who noted that the Tribunal had not considered the precedents in the assessee's own case for prior years, where similar disallowances were dealt with differently and found that the Tribunal's failure to consider these decisions amounted to a significant oversight. It was highlighted that the Tribunal had largely relied on the submissions made by the assessee's representative, rather than independently analysing the applicability of the prior decisions to the current case. Hon'ble High Court set aside the Tribunal's order regarding the specific grounds related to Section 14A disallowance and remanded the matter back to the Tribunal for a fresh hearing. Hon'ble High Court clarified that it did not delve into the merits of the case but emphasized that the Tribunal should reassess the matter de novo, giving due consideration to the precedents in the assessee's prior assessment years.

On Revenue's Ground No. 1 in ITA No. 547/Ahd/2016 and Assessee's grounds in CO

6. Before us the Authorised Representative (AR) placed on record the order of Hon'ble Gujarat High Court and explained the issue with reference to assessment order and CIT(A)'s appellate order. He also placed on record decision of the Co-ordinate Bench in assessee's own case relating to A.Y. 2008-09 to A.Y. 2010-11 along with Judgement of Hon'ble Gujarat High Court in assessee's own case for A.Y. 2009-10 and A.Y. 2010-11.

7. The AR stated that the assessee in its computation of income suo-moto disallowed expenses of Rs.60,276/- u/s 14A and the AO, without noting his reasoned dissatisfaction invoked the rule 8D while calculating the disallowance. He also referred the clause 17(1) of the Form 3CD with respect to the expenditure of Rs.60,276/- attributed to the earning of tax-free income details of which were submitted to the AO. He further submitted that the assessee's own funds are much higher than the investment made, and AO has not established the nexus between borrowed funds and investment for earning exempt income. He stated that the CIT(A) has taken into account these facts before deleting the disallowance relating to interest expense. He also explained with the help of audited financial statements that the assessee had sufficient own funds the details of which are as follows:

	As on 31-3-2011
Share Capital (In Lakhs)	Rs. 7,969.55
Reserves and Surplus (in Lakhs)	Rs. 2,74,895.92

8. The AR also stated that all the investments in tax free securities were made prior to F.Y. 2008-09. The AR referred the decision of Co-ordinate bench in assessee's own case for the A.Y. 2010-11 in ITA No. 1403/Ahd/2014. He further stated that Hon'ble Gujarat High Court has confirmed the order of ITAT in Tax Appeal No. 100 of 2019.

9. The AR placed reliance on the decision of Hon'ble Gujarat High Court in case of India Gelatine and Chemicals Ltd. [2015] 376 ITR 553 where the Hon'ble Gujarat High Court upheld the principle that for a disallowance under Section 14A to be valid, there must be a clear nexus between the interest-bearing funds and the investments made in tax-exempt income-generating assets. Without such evidence, the disallowance cannot stand. The AR also placed reliance on the decision of Hon'ble Supreme Court in case of Excel Industries Ltd. [2013] 38 taxmann.com 100 which focuses on principles of accrual of income, particularly hypothetical versus real income. On the overhand, the Departmental Representative (DR) relied on the order of power authorities.

10. We have reviewed the summary of financials referred by the AR during the course of hearing before and observe that the assessee has sufficient own funds. Total own funds (Share Capital (+) Reserves ad Surplus) as on 31-3-2011 amounted to Rs. 282,865.47 Lakhs (Rs. 7969.55 Lakhs (+) Rs. 2,74,895.92Lakhs) as compared to borrowed funds of Rs. 68,758.26 Lakhs. We also note that during the A.Y. 2011-12 the assessee company has not made any investment in tax-free securities. From the tabulated details submitted during the course of the hearing before us, we

also observe that the own funds are far exceeding the investment yielding exempt income.

11. After careful consideration of the arguments presented by both the AR and the DR, as well as the relevant judicial precedents, we find that the disallowance relating to Interest component made by the AO under Section 14A read with Rule 8D, is not sustainable in law. The AR has convincingly demonstrated, with the help of audited financial statements, that the assessee's own funds, comprising share capital and reserves, far exceed the investments made in tax-free securities. It is further noted that the AO failed to establish any nexus between the borrowed funds and the investments made to earn exempt income, which is a prerequisite for making a disallowance under Section 14A.

12. We also take note of the Hon'ble Gujarat High Court's ruling in the assessee's own case for A.Y. 2009-10 and A.Y. 2010-11, wherein it was held that no disallowance under Section 14A is warranted when the assessee's interest-free funds exceed the investments made, and there is no evidence to suggest that borrowed funds were used for such investments. Additionally, the decision of the Hon'ble Gujarat High Court in the case of **India Gelatine and Chemicals Ltd. (supra)** supports the principle that a clear nexus between interest-bearing funds and investments is essential for a valid disallowance under Section 14A. Without such evidence, the disallowance cannot stand.

13. Furthermore, the Hon'ble Supreme Court in the case of **Excel Industries Ltd.(supra)** has emphasized the need for consistency in the

application of legal principles across assessment years unless there is a substantial reason to deviate. The Tribunal in the assessee's own case for A.Y. 2010-11 has upheld the CIT(A)'s deletion of the interest disallowance on similar grounds.

14. In light of the above, we uphold the order of the CIT(A) in deleting the disallowance made under Section 14A of the Act. Consequently, the Revenue's appeal on this ground is dismissed. Regarding the cross-objections raised by the assessee, in view of our decision to uphold the deletion of the disallowance, the same are rendered infructuous and are dismissed accordingly.

On Assessee's Ground No. 2 in ITA No.624/Ahd/2016

15. On this ground before us, the AR reiterated that assessee had already made a suo moto disallowance for administrative expenses and that the AO's application of Rule 8D was mechanical and excessive.

16. Regarding the administrative expenses, the AR stated that in assessee's own case for the A.Y. 2010-11, the Tribunal referred to its own prior decisions and those of the Gujarat High Court, which had consistently restricted the disallowance to a lump sum amount (₹10 lakhs for AY 2008-09 and ₹15 lakhs for AY 2009-10) based on the magnitude of the investments and the income and restricted the disallowance for administrative expenses to ₹15 lakhs for the year under consideration.

17. In this case, the dispute centres around the disallowance of administrative expenses under Rule 8D of Rules, read with Section 14A(2) of the Act. The Assessee had already made a suo moto disallowance of ₹60,276, and the Assessing Officer disallowed an additional ₹2,12,49,050/- without providing a clear basis for rejecting the Assessee's calculation.

18. We observe that the principle of judicial consistency, which requires that similar issues be decided in a similar manner across different assessment years, is crucial in ensuring fairness and predictability in tax adjudication. In the Assessee's own case for earlier assessment years, the Hon'ble ITAT and the Gujarat High Court consistently restricted disallowances to lump sum amounts, considering the magnitude of investments and income. Specifically, disallowances were restricted to Rs.15 lakhs for Assessment Year 2009-10.

19. However, the CIT(A) has erred in not adhering to this established principle of judicial consistency. Despite the Assessee's similar facts and circumstances, the CIT(A) confirmed a significantly higher disallowance without adequate justification for deviating from the prior judicial decisions. In line with the principle of judicial consistency and given that there are no significant changes in the facts or legal position for the year under consideration, it is appropriate to restrict the disallowance of administrative expenses to Rs.15 lakhs.

20. This ground of appeal is partly allowed in favour of the assessee, with the disallowance of administrative expenses being restricted to ₹15 lakhs.

21. In the combined result the Revenue's appeal is dismissed and assessee's appeal is partly allowed. The cross-objections raised by the assessee, are rendered infructuous and are dismissed accordingly.

Order pronounced in the Open Court on 27th August, 2024 at Ahmedabad.

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

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

अहमदाबाद/Ahmedabad,दिनांक/Dated 27/08/2024

Tanmay, Sr. P.S.

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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)-(NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad