

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

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1002/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2018-19

| | | |
|---|-----------------------|----------------------------------|
| Adani Green Energy Limited Adani Corporate House Shantigram 15, S.G. Highway Near Vaishno Devi Circle Khodiyar B.O., Khodiyar Ahmedabad - 382 421 (Gujarat) | बनाम/ v/s. | The Principal CIT Ahmedabad-1 |
| स्थायी लेखा सं./PAN: AANCA 1814 G | | |
| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |
| Assessee by : | | Shri Vartik Chokshi, A.R. |
| Revenue by : | | Shri H. Phani Raju, CIT-DR |

सुनवाई की तारीख/Date of Hearing : 03/09/2024
घोषणा की तारीख /Date of Pronouncement: 09/09/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been preferred by the assessee against the order passed by the Ld.Principal Commissioner of Income Tax, Ahmedabad-1 (hereinafter referred to as "PCIT") under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 16-03-2024, for the Assessment Year (AY) 2018-19.

Facts of the case:

2. The assessee-company filed its return of income on 26-03-2019 declaring total income of Rs. (-)32,70,00,706/-. The return was processed u/s.143(1) of the Act determining total income of Rs. (-) 32,48,93,990/-, after an adjustment of Rs.21,06,716/- on account of late payment of employees' contribution to National Pension Scheme. Later on, the case was selected for complete scrutiny under CASS by issuing notice u/s 143(2) of the Act dated 22-09-2019 for the scrutiny of following issues:

1. Investments/ Advances/ Loans
2. Refund Claim
3. Business Loss
4. ICDS Compliance and adjustment
5. **Expenses Incurred for earning exempt income**

2.1. A notice u/s 142(1) of the Act was issued on 01-02-2020 requiring the assessee to provide information relating to the issues specified in notice u/s. 143(2) of the Act. The assessee filed its reply on 28-02-2020 giving the particulars called for including the expense incurred for earning exempt income. The assessee submitted that during the year under assessment no exempt income has been earned on investments made in shares and debentures of subsidiary companies as well as on investments in LLP and also stated that no disallowance u/s.14A of the Act has been made. While stating so, the assessee cited the **decision of Hon'ble Supreme Court in case of CIT (Central)-1 Vs. Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250 (SC)**, where the Hon'ble Apex Court dismissed the revenue's SLP against the ruling of **Hon'ble Madras High Court in the case**

of Chettinad Logistics (P.) Ltd. [2017] 80 taxmann.com 221 (Mad.) The AO after verifying all the facts assessed the total income of Rs. (-) 32,48,93,99/- as per order u/s.143(1) of the Act.

3. Thereafter, the Ld.PCIT observed that the assessee has invested in listed and unlisted equity shares during the year under consideration and also observed that the AO has not invoked provisions of section 14A of the Act read with Rule 8D of the I.T. Rules, 1962 and issued a notice u/s. 263 of the Act on 28-02-2024 requiring the assessee to show-cause as to why the order passed u/s.143(3) r.w.s. 144B of the Act dated 14-05-2021 should not be revised. In response to the same, the assessee challenged the jurisdiction assumed by the Ld.PCIT u/s.263 of the Act. The Ld.PCIT passed an order u/s 263 of the Act dated 16-03-2024 as the assessee did not submit anything on the merit of the issue but argued on the legal aspect of the proceeding u/s.263 of the Act. The Ld.PCIT set aside the order passed by the AO u/s. 143(3) r.w.s. 144B of the Act with a direction to pass afresh assessment order after duly examining the facts of the case to the extent discussed in the order.

4. Aggrieved by the order of the Ld.PCIT, now the assessee is in appeal before us with the following grounds of appeal:

- 1. In law and in the facts and circumstances of the Appellant's case, impugned order u/s. 263 of the Act passed by Principal Commissioner of Income Tax, Ahmedabad-1 bad in law and deserves to be quashed.*
- 2. In law and in the facts and circumstances of the Appellant's case, the Principal Commissioner of Income Tax, Ahmedabad-1 has erred in setting aside the assessment order dated 14.05.2021 passed by the Assessing Officer without considering the fact that the Assessing officer during the course of Assessment proceedings has already gone through*

issue regarding investment in quoted and unquoted shares and net proceeds from sale of (investment) in Mutual Fund during the year under consideration amounting to Rs. 1431,71,00,500/- and Rs.20,73,72,000/- respectively and after satisfying himself with respect to the details submitted by the appellant company, the Ld. Assessing officer has passed the order under section 143(3) r.w.s 144B of the Act.

3. *In law and in the facts and circumstances of the Appellant's case, the Principal Commissioner of Income Tax, Ahmedabad-1 has erred in arriving at a conclusion without any basis whatsoever to the effect that the assessment order passed u/s 143(3) of the Act by the Assessing Officer was erroneous as well as prejudicial to the interest of the revenue.*
4. *In law and in the facts and circumstances of the Appellant's case, the Principal Commissioner of Income Tax, Ahmedabad-1 has failed to appreciate that the twin conditions for assuming jurisdiction u/s. 263 of the Act are not satisfied in the case of appellant company as issue which has been relied upon for passing the order u/s. 263 does not show any error or prejudice to the interest of the revenue.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

5. During the course of hearing before us, the Ld.Authorised Representative (AR) of the assessee, took us through the notices issued by the AO and the reply submitted by the assessee in response thereto. The Ld.AR stated that the assessee has not earned any exempt income as it is evident from the statement of income submitted. The Ld.AR also stated that the Ld.PCIT has relied on the Circular No. 5 of 2014 issued by CBDT and concluded that the AO has failed to make proper examination of the issues. The Ld.AR further stated that the issue was properly examined by the AO by issuing the notice u/s.142(1) of the Act as explained and, therefore, the conclusion of the Ld.PCIT is not correct. The Ld.AR placed

reliance on the **decision of Co-ordinate Bench in the case of N.K. Proteins Ltd. Vs. ACIT, Circle 3(1)(1), Ahmedabad (in ITA No. 313/Ahd/2022 dated 12-06-2024).**

6. On the other hand, the Ld.Departmental Representative (DR) argued that the Explanation to section 14A inserted by the Finance Act, 2022 w.e.f. 1.4.2022 is clarificatory in nature and, hence, it has retrospective applicability and, therefore, the provisions of section 14A are applicable to the assessee even if there is no exempt income earned by the assessee. For the retrospective applicability of the amendment, the Ld.DR placed reliance on the **Judgment of Hon'ble Supreme Court in the case of Commissioner of Income-tax, Ahmedabad Vs. Gold Coin Health Food (P.) Ltd. reported at [2008] 304 ITR 303 (SC).**

7. We have considered the submissions made by both the parties and perused the material on record. It is an undisputed fact that the assessee did not earn any exempt income during the year under consideration. **The Hon'ble Supreme Court in Chettinad Logistics (P.) Ltd. (supra)** has categorically held that when no exempt income is earned, no disallowance under section 14A of the Act can be made. The AO, in the original assessment proceedings, had duly examined the issue by issuing a notice under section 142(1) of the Act, to which the assessee had responded. The AO, after being satisfied with the submissions, passed the order under section 143(3) read with section 144B of the Act.

7.1. The Ld.PCIT has invoked Section 263 of the Act, claiming that the AO did not properly examine the applicability of Section 14A of the Act,

resulting in an erroneous order prejudicial to the revenue. However, as argued by the assessee, the AO had duly inquired into the relevant facts and legal provisions during the original assessment proceedings. Considering the above, it is apparent that the twin conditions required for invoking Section 263 of the Act are not satisfied in this case as the AO had made inquiries and followed the law as interpreted by Courts, including the Hon'ble Supreme Court. The fact that the Ld.PCIT has a different view does not make the order erroneous. Also, the non-application of Section 14A of the Act was based on a judicially accepted position that no disallowance can be made, when no exempt income is earned.

7.2. The Ld.DR has argued that the amendment to Section 14A of the Act, brought by the Finance Act, 2022, is clarificatory and has retrospective effect, relying on the **judgement of the Hon'ble Supreme Court in the case of Commissioner of Income-tax, Ahmedabad Vs. Gold Coin Health Food (P.) Ltd. (supra)**. The Ld.DR's argument is that, even in the absence of exempt income, the provisions of Section 14A of the Act would still apply retrospectively, as the explanation was intended to clarify the law as it always stood.

7.3. However, after considering the decisions relied upon by both parties, we find that the **judgement of the Hon'ble Supreme Court in Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250 (SC)**, relied upon by the assessee, provides a clear legal position that when no exempt income is earned, no disallowance under Section 14A of the Act can be made. This

decision aligns with the principle upheld by various High Courts and Tribunal decisions, including *N.K. Proteins Ltd. Vs. ACIT* (in ITA No. 313/Ahd/2022 dated 12-06-2024), wherein the Co-ordinate Bench reiterated that the disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned by the assessee, and no disallowance can be made if no exempt income is earned.

7.4. So far as the reliance placed by the Ld.DR in the case of *Gold Coin Health Food (P.) Ltd.(supra)* is concerned, it is crucial to note that this decision deals with the levy of penalty under Section 271(1)(c) of the Act, and the retrospective applicability of amendments regarding penalties. The principles laid down in *Gold Coin Health Food (P.) Ltd.* do not directly address the issue of disallowance under Section 14A of the Act in the context of the earning of exempt income. Moreover, the explanation inserted by the Finance Act, 2022, though stated to be clarificatory, pertains specifically to the treatment of expenditure related to exempt income, and several judicial authorities, including the Co-ordinate Bench in *N.K. Proteins Ltd. (supra)* have held that such amendments apply prospectively and not retrospectively.

7.5. Therefore, in light of the consistent judicial view including the decisions of the Hon'ble Supreme Court and various High Courts, the amendment to Section 14A of the Act introduced by the Finance Act, 2022, cannot be applied retrospectively to the assessment year under consideration. The revisionary order under Section 263 of the Act, based on the assumption of retrospective applicability, is thus unsustainable.

7.6. Considering the above discussion, we hold that the Ld.PCIT was not justified in invoking jurisdiction under section 263 of the Act. The revisionary order is hereby quashed, and the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 09th September, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 09/09/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. 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)/The Pr.CIT, Ahmedabad-1
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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