

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 1099/Ahd/2024
Assessment Year 2013-14**

Avani Petrochem Pvt. Ltd. 3 rd Floor, Padmavati Complex, Akota, Vadodara Gujarat-390020 PAN: AABCA7945A (Appellant)	Vs	Principal Commissioner of Income Tax (Central), Surat At Vadod (Respondent)
---	----	---

**Assessee Represented: Shri Jigar Adhyaru, C.A.
Revenue Represented: Shri A.P. Singh, CIT-DR**

Date of hearing : 22-10-2024
Date of pronouncement : 04-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 28.03.2024 passed by the Principal Commissioner of Income Tax (Central), Surat arising out of the assessment order passed under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. Brief facts of the case is that the assessee is a Private Limited Company engaged in the manufacturer of petroleum products, namely hydrocarbon solvents and oils, rubber compounds, ink oils etc., automotive lubricants etc. For the Asst. Year 2013-14, the assessee filed its Return of Income on 17-09-2013 declaring total income of Rs. 3,83,81,040/-. The return was taken for scrutiny assessment and assessment order dated 31-01-2016 was passed determining the total income of Rs. 3,84,22,570/-. Thereafter a search action u/s. 132 of the Act carried out on 23-01-2020. Accordingly, notice u/s. 153A was issued on 17-03-2021. In response, the assessee requested to treat the original Return of Income. In response to the above notice and assessment was completed on 30-09-2021 determining the total assessed income at Rs.8,07,02,570/-.

3. On perusal of the above assessment order by Ld. PCIT, the Assessing Officer computed the disallowance u/s. 14A of Rs.39,622/- as made in the original assessment order dated 31-01-2016. He failed to consider the investment made by the assessee in the Partnership Firm M/s. Avani Infrastructure of Rs.11,26,71,662/- and in M/s. Harsh Reality of Rs.1,54,74,500/- for the purpose of disallowance u/s. 14A, thereby rendering the reassessment order erroneous insofar as it is prejudicial to the interest of Revenue. Hence a show cause notice dated 14-03-2024 was issued to revise the assessment order passed by the Assessing Officer to include the above disallowances u/s. 14A of the Act.

4. The assessee vide its reply stated that the income from the partnership firm is exempt u/s. 10(2) of the Act investment in firms was not required to be considered while computing the disallowance u/s. 14A r.w. Rule 8D of the Rules. Further perusal of the financial statements, it is evident that assessee did not earned share in profits from the above Partnership firms. Thus there is no exempt income by the assessee, but The only exempt income of dividend is Rs.175/-. Therefore requested to drop the proceedings. The above reply was considered but the Ld. PCIT set aside the assessment order passed u/s. 153A r.w.s. 143(3) with a direction to the Assessing Officer to pass fresh assessment order and make disallowance u/s. 14A r.w. Rule 8D by giving opportunity of hearing to the assessee.

5.1 Aggrieved against the same, assessee is in appeal before us raising argumentative Grounds of Appeal on the above sole issue. Heard rival submissions at length and perused the materials before us.

6. On perusal of assessment order, it is evident the search action u/s. 132 was conducted at the premises of the assessee on 23-01-2020. Thus the present Asst. Year 2013-14 is unabated/completed assessment year. In the original assessment order passed u/s. 143(3) dated 31-01-2016, the Ld. A.O. made the disallowance as follows:

Interest Expenses for computation u/s. 14A r.w. Rule 8D	1,56,93,588/-	A
Investment as on 31.03.2013 (1)	Rs. 14,69,202/-	
Investment as on 31.03.2012 (2)	Rs. 14,69,452/-	
Avg. Investment [(1)+(2)/2]	Rs. 14,69,327	B
Assets as on 31.03.2013 (a)	Rs.	

	66,63,24,887/-	
Assets as on 31.03.2012 (b)	Rs. 76,05,63,810/-	
Avg. Assets [(a)+(b)/2]	Rs.7,14,444,348/-	C

(i) Expenses incurred on interest attributable to exempt income [(AxB)/C]	$\frac{(15693588 \times 1469327)}{714444348}$	Rs. 32,275/-
(ii) Expenses being 0.5% of average investment [0.5% of B]	$\frac{0.5 \times 1469327}{100}$	Rs. 7,347/-
Total Disallowance u/s. 14A r.w. Rule 8D of the Act		Rs. 39,622/-

5.2. In the second assessment order passed u/s. 153A r.w.s. 143(3) dated 30.09.2021, the Assessing Officer made addition u/s. 68 r.w.s. 115BBE of Rs. 3,77,50,000/- on accommodation entries taken by the assessee from Shell Companies based on seized material. Apart from the above, during the course revision proceedings, the assessee has submitted that the provisions of Section 14A are not applicable in the investments made in Partnership Firms, as the assessee does not earn any exempt income, in the form of share in profits from M/s Avani Infrastructure and M/s Harsh Reality. In other words, though the balances are outstanding in respect of abovementioned Partnership Firms, the assessee has not earned any income from those Partnership Firms, which can be evident from the financials of the assessee. Therefore, it is concluded that the provisions of Section 14A are squarely not applicable in the instant case. Further during the A.Y. 2013-14, the assessee earned only Rs. 175/- for 'Dividend income, being exempt income and even if the disallowance u/s 14A are made, it cannot exceed Rs. 175/-. In support of this contention,

the assessee has relied upon the following judicial decisions such as

(i) Principal Commissioner of Income-tax v. Devata Tradelink Ltd. [2023] 157 taxmann.com 269 (Delhi)

(ii) Deputy Commissioner of Income-tax v. Jite Shipyard Ltd. [2023] 157 taxmann.com 733 (Delhi)

(iii) Unilever Industries (P.) Ltd. v. Deputy Commissioner of Income-tax [2024] 158 taxmann.com 599 (Mumbai - Trib.)

5.3. Furthermore, on perusal of the financial statements of the assessee for A.Y. 2013-14, it is seen that the assessee has enough net worth of Rs 25,63,78,677/- (as on 31.03.2013) which is quite more than enough to the investments in two Partnership Firms i.e. M/s Avani Infrastructure Rs. 11,26,71,662) & M/s Harsh Reality (Rs. 1,54,74,500) In such circumstances, it is not legitimate to make the disallowance u/s. 14A r.w.r. 8D.

5.4. Section 263 empowers the Principal Commissioner of Income Tax to revise any order passed under the Act which is erroneous insofar as it is prejudicial to the interest of the revenue. These are special and wide powers conferred upon the Principal Commissioner of Income Tax, to bring to tax any loss of revenue from the orders passed under the Act. At the same time, these are not unfettered powers, but are specific and are subject to conditions contained in the section for invoking the jurisdiction. A bare reading of section 263, makes it clear that the prerequisite to exercise of jurisdiction by the PCIT suo moto under it, is that the order of the A.O is erroneous insofar as it is prejudicial to the interests of the Revenue. The PCIT has to be satisfied of twin

conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act.

5.5. In short, where the AO, while conducting original assessment proceedings u/s. 143(3) of the Act, has scrutinize the accounts in all aspects then the action of the PCIT to revise this order is unlawful.

5.6. The Jurisdictional High Court in the case of PCIT Vs. Dipesh Lalchand Shah reported in [2022] 143 taxmann.com 419 wherein it was held as follows:

“Section 14A, read with section 263, of the Income-tax Act, 1961, and with rule BD of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (General) Assessment year 2014-15 Assessee-individual was engaged in business of trading and earned income from salary, profits and gains from business and profession and profit from partnership firm - During scrutiny, Assessing Officer passed assessment order assessing income of assessee as nil Principal Commissioner invoked revisionary proceedings on ground that as per provisions of section 14A read with rule 8D, expenses pertaining to earning exempt income was required to be disallowed even if no exempt income was earned Tribunal observed that income of assessee from partnership was negative and no dividend income was earned - He, thus, held that disallowance under section 14A could not be made as assessee did not claim any exempt income in relevant assessment year Whether there was no infirmity in impugned order passed by Tribunal.”

5.7. The Jurisdictional High Court in the case of PCIT Vs. Kalpataru Power Transmission Ltd. reported in [2024] 167 taxmann.com 128 held that where the assessee had sufficient interest free funds to meet investment in Indian subsidiaries

yielding tax free dividend, interest paid on borrowed funds could not be disallowed u/s. 14A held as follows:

“Section 14A, read with section 148, of the Income-tax Act, 1961 and rule BD of the Income-tax Rules, 1962-Expenditure incurred in relation to income not includible in total income (Reassessment) - Assessee filed its return of income declaring loss - Return filed by assessee was taken-up for scrutiny and assessee was issued several notices under section 142(1) wherein questions relating to investments of assessee, Income earned from it and disallowance of expenditure under section 14A were raised and replied to by assessee and thereafter, assessment order under section 143(3), came to be passed, whereby, return filed by assessee was accepted - Whether attempt on part of revenue to reopen assessment after scrutiny assessment, after a period of more than four years, especially, in absence of any circumstances about non-disclosure of true and full material on part of assessee, was not permissible Held, yes Whether thus, it was not open for respondent authority to exercise powers of reopening of assessment, which had already become final.”

5.8. The Jurisdictional High Court in the case of Sandesh Procon (P.) Ltd. Vs. ACIT reported in [2023] 152 taxmann.com 503 wherein it was held as follows:

“Section 14A, read with section 148, of the Income-tax Act, 1961 and rule 8D of the Income-tax Rules, 1962-Expenditure incurred in relation to income not includible in total income (Reassessment) - Assessee filed its return of income declaring loss-Return filed by assessee was taken-up for scrutiny and assessee was issued several notices under section 142(1) wherein questions relating to investments of assessee, income earned from it and disallowance of expenditure under section 14A were raised and replied to by assessee and thereafter, assessment order under section 143(3), came to be passed, whereby, return filed by assessee was accepted-Whether attempt on part of revenue to reopen assessment after scrutiny assessment, after a period of more than four years, especially, in absence of any circumstances about non-disclosure of true and full material on part of assessee, was not permissible - Held, yes Whether thus, it was not open for respondent authority to exercise powers of reopening of assessment, which had already become final”.

9. Respectfully following the above judicial precedents, we have no hesitation in quashing the Revision proceedings initiated by the Ld. PCIT.

10. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 04-11-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 04/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
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/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद