

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ A ” BENCH, AHMEDABAD**

**BEFORE SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**  
**And**  
**SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 837/AHD/2024**  
**निर्धारण वर्ष/Asstt. Year: 2018-2019**

Gujarat Tea Processor & Packers Ltd., Waghbakri House, Opp. Parimal Garden, Ellisbridge, Ahmedabad-380006.  <b>PAN: AAACG5594L</b>	<b>बनाम</b> Vs	Principal Commissioner of Income Tax-1, Ahmedabad.
(अपीलार्थी / <b>Appellant</b> )		(प्रत्यर्थी / <b>Respondent</b> )

Assessee by :	Shri Yogesh Shah, AR
Revenue by :	Shri R.N Dsouza, CIT.DR

सुनवाई की तारीख/Date of Hearing : 30/09/2024  
घोषणा की तारीख /Date of Pronouncement: 29/10/2024

**आदेश/O R D E R**

**PER NARENDRA PRASAD SINHA, AM:**

This appeal filed by the assessee is directed against the order of the Ld. PCIT, Ahmedabad-1, dated 29.02.2023 for the Assessment Year (A.Y.) 2018-19, passed in his revisional jurisdiction u/s. 263 of the Income Tax Act (hereinafter referred to as “the Act”).

2. The brief facts of the case are that the return of income for AY 2018-19 was filed by the assessee on 23.10.2018, declaring total income of Rs.1,40,71,94,040/-. The case was selected for complete scrutiny and the

assessment was completed u/s. 143(3) of the Act on 12.04.2021 at total income of Rs.1,40,71,95,040/-. Subsequently, the Ld. PCIT called for the records and found that the assessee had made investment in equity shares during the year under consideration. Therefore, the provision of section 14A r.w Rule 8D of Income Tax Rules was applicable in the case but the AO did not consider this provision while finalizing the assessment. Therefore, the Ld. PCIT held that the order of the AO was erroneous and prejudicial to the interest of revenue. Accordingly, he passed the impugned order u/s.263 of the Act, after allowing an opportunity of being heard to the assessee, whereby the order of the AO was set aside with a direction to complete the assessment afresh after considering the disallowance u/s 14A r.w Rule 8D of the Rules.

3. Aggrieved with the order of the Ld. PCIT, the assessee has filed the present appeal before us. The following grounds have been taken in this appeal:

*1. The order passed by the learned CIT under Section 263 of the Income-tax Act, 1961 (the Act) is erroneous on facts and contrary to the provisions of law and therefore requires to be quashed. It is submitted that it be so held now.*

*1.1. The learned CIT erred on facts and in law in holding that the order under Section 143(3) passed by the Assessing Officer was erroneous and prejudicial to the interest of revenue and thereby setting aside the aforesaid order and directing the Assessing officer (AO) to reframe the assessment. It is submitted it be so held now.*

*2. The learned CIT has erred in not appreciating that the amount disallowed by the appellant u/s 14A was worked out in scientific basis and was accordingly accepted in assessment proceedings. It is submitted that it be so held now.*

*3. The learned CIT erred in not appreciating the fact that if at all disallowance under Section 14A needs to be made as per Rule 8D, the correct amount is Rs. 7,15,263 as against of Rs. 48,96,756, worked out by him. It is submitted that it be so held now.*

*Your appellant prays for leave to add to alter and/or to amend any of the grounds before the final hearing of the appeal.*

4. Shri Yogesh Shah, the Ld. AR appearing for the assessee submitted that the assessee had sumo motto made disallowance of Rs. 83,932/- u/s.14A of the Act, in the return of income. Therefore, the order of the AO could not have been held as erroneous and prejudicial to the interest of the revenue as the disallowance as made by the assessee was accepted by the AO. The Ld. AR further submitted that in the show-cause notice u/s.263 of the Act, the Ld. PCIT had worked disallowance u/s.14A at Rs.48,96,756/- and accordingly had directed the AO to make the disallowance in the set-aside proceedings. According to the Ld. AR, this direction of the Ld. PCIT was not correct as no option was left with the AO to examine the matter independently. He further submitted that the contention of the assessee before the Ld. PCIT that the disallowance u/s.14A should be restricted to Rs.7,15,263/-, the working of which was given in the reply to notice u/s 263 of the Act, was also not considered.

5. Per Contra, Shri RN Dsouza, the Ld. CIT. DR submitted that since the AO did not examine the provision of section 14A r.w. Rule 8D while completing the assessment, the order of the AO was certainly erroneous and prejudicial to the interest of the revenue. According to the Ld. CIT-DR, no query was made by the AO in respect of disallowance u/s 14A r.w. Rule 8D in any of the questionnaires or notices issued by him in the course of assessment proceeding. He further explained that the Ld. PCIT had set-aside the assessment with a direction to the AO to pass the assessment order in accordance with law after duly examining the facts of the case and that no direction was given to disallow Rs.49,80,688/- u/s.14A of the Act, as contended by the Ld.AR

6. We have considered the rival submissions. It is found that the case of the assessee was selected for complete scrutiny. The fact that the assessee had made investment in equity shares during the year and the income earned thereon was exempt from tax and, therefore, the provision of section 14A r.w. Rule 8D of Income Tax Rules was applicable in the case of the assessee; has not been denied. In the course of assessment, no query was made by the AO in respect of disallowance u/s 14A r.w. Rule 8D. Under the circumstances, the failure of the AO to consider the disallowance of the expenditure specified u/s.14A r.w Rule 8D for earning the exempt income was certainly an error in the assessment order. Therefore, the Ld. PCIT has rightly held that the order of the AO was erroneous and prejudicial to the interest of revenue since the AO did not consider the disallowance u/s.14A r.w.s Rule 8D. The contention of the assessee is that the disallowance of Rs.83,932/- u/s.14A was suo motto made by the assessee. However, the AO did not examine as to whether the disallowance as made by the AO was correct and in accordance with the provision of section 14A r.w. rule 8D. The basis of suo-motto disallowance as made by the assessee was neither explained by the assessee nor examined by the AO. The failure to carry out this exercise had made the assessment order erroneous and prejudicial to the interest of revenue.

7. The submission of the assessee before the Ld. PCIT that the disallowance u/s.14A should be restricted to Rs.7,15,263/- certainly indicates that the disallowance of Rs.83,932/- made u/s.14A in the return of income was not correct. The contention of the assessee is that the Ld. PCIT had worked out the disallowance u/s.14A r.w. Rule 8D at Rs.49,80,688/- and thereafter directed the AO to examine the matter; which would leave no option to the AO to examine the matter independently but to follow the

direction of the Ld. PCIT. Though no such specific direction has been given by the PCIT in the order u/s 263 of the Act, the working of disallowance as done by the Ld. PCIT would certainly prejudice the AO in examining the issue in an independent manner. We, therefore, direct that the AO should examine the matter independently and without being prejudiced or influenced by the working of the disallowance as made by the Ld. PCIT in the order u/s.263 of the Act. Further, the AO should also consider the submission of the assessee that the disallowance u/s. 14A r.w Rule 8D should be restricted to Rs.7,15,263/- only, on merits and give his independent finding in this regard.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced in the Open Court on 29 October, 2024 at Ahmedabad.**

**Sd/-  
(TR SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(NARENDRA PRASAD SINHA)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/10/2024

True Copy

*Manish, 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)-(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