

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1085/JP/2024  
निर्धारण वर्ष / Assessment Year : 2018-19

Agrasen Engineering Industries Pvt. Ltd., G-516-518, Road No. 9A V. K.I Area, Jaipur	बनाम Vs.	National Centre	E-Assessment
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA 3401 D			
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent	

निर्धारिती की ओर से / Assessee by : Sh. Vijay Goyal, CA  
राजस्व की ओर से / Revenue by : Mrs. Anita Rinesh, JCIT-Sr. DR

सुनवाई की तारीख / Date of Hearing : 11/12/2024  
उदघोषणा की तारीख / Date of Pronouncement: 08/01/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of present appeal, assessee challenges the order of the National Faceless Appeal Centre, Delhi dated 24/06/2024 [ in short 'NFAC' / CIT(A)]. The dispute relates to the assessment year 2018-19. The said order of the Id. CIT(A) arises because the assessee had challenged the assessment order dated 15.04.2021 passed under section 143(3) r.w.s

143(3A) & 143(3B) of the Income Tax Act, [ for short "AO"] by National e-Assessment Centre, Delhi before him.

2. In this appeal, the assessee has raised following grounds: -

"On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in: -

1.1 upholding that the AO has satisfied himself to invoke the provisions of section 14A in the appellant's case without any doubt.

1.2 rejecting the submission of the appellant that the investments were made out of non-interest-bearing funds as the assessee had sufficient own funds.

1.3 confirming the part of the addition made by Ld. A.O. without considering the fact that the all the expenses were incurred wholly and exclusively for earning taxable income and no expenses were incurred in relation to investments made by the assessee. The expenses which directly attributable to investments were already disallowed by the appellant in its ITR.

1.4 confirming the addition of Rs.8,55,037/-, out of total addition of Rs. 23,20,009/- made by Ld. A.O. u/s 14A of the Act, which is to the extent exempt dividend income earned by appellant.

2. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal."

3. Succinctly, the fact as culled out from the records are that the case of the assessee was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:

S. No.	Issues
i.	Short Term Capital Gains u/s 111A
ii.	Expenditure of Personal Nature
iii.	Refund Claim
iv.	Duty Drawback

3.1 The appellant-assessee filed return of income for AY 2018-19 on 27.07.2018, declaring total income of Rs. 11,07,21,870/- under normal provision of Income Tax Act and Rs. 11,28,92,617/- u/s 115JB of the Act. The case was selected for scrutiny under CASS and after that selection notice u/s 143(2) of the Income Tax Act, 1961 was issued on 22.09.2019 and duly served upon the assessee. Subsequently, notice u/s 142(1) of the Act along with questionnaire was issued online on 02.12.2020 and 01.02.2021. In compliance with these notices, the assessee furnished details online through e-proceeding facility from time to time.

3.2 The assessee company derives income from manufacturing and job work of automobile components. While conducting the proceeding of making the assessment, Id. AO noted from the balance sheet of the assessee that the assessee had made investments in equities shares amounting to Rs. 27,00,23,608/-.

Ld. AO also observed that such an investment would generate exempt income in the form of dividend income. Additionally, the managerial/administrative cost for arranging such a type of investment cannot be denied.

Regarding the investments made it was noted by the Id. AO that the assessee had made certain investments during the period under

consideration to generate exempt income there from and claimed some expenses which were shown as deductions from the taxable income of the assessee. This was considering against the basic principle of taxation to pay tax on the net income i.e. gross income minus expenses to earn that income Expenses incurred can be allowed only to the extent they are relatable to the taxable income and not that of the exempt income.

As is evident from the records appellant-assessee earned exempt income i.e. dividend of Rs. 8,55,037/-. In view of that fact that the assessee earned exempt income in the form of dividend income of Rs. 8,55,037/- the assessee was asked show cause as to why disallowance u/s 14A of the Act read with rule 8D of the IT Rules, 1962 should not be made. In that matter, the assessee filed a reply on 16.02.2021. Ld. AO considered that reply of the assessee but found that same was not tenable as the assessee had made investments to earn exempt income therefrom. Thus, he noted that the expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income, which is not specifically shown by the assessee and, hence, not substantiate nexus of expenses to earn exempt income established. Further, the assessee's plea that the company has invested Rs.27,00,23,608/- out of own funds was not considered as the assessee had common pool of funds and composite books of account from

where it was not possible to exactly identify that the tax-free investment was made from surplus & reserves available with company during the year under reference.

Further, Id. AO noted that the assessee had not proved nexus between interest free investment out of surplus & reserves available. So, based on CBDT's Circular No. 5/2014 dated 11.02.2014 that section 14A of the Act does not use the word "income of the year but "income under the Act" therefore, to invoke disallowance u/s. 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration. The onus of the assessee had not been proved and therefore, Id. AO found that there was a clear nexus between the investments made and expenses claimed by the assessee.

Ld. AO thus went on to observe that invocation of section 14A is automatic and comes into operation without any exception even if exempt income is not earned during the year if investment is such which would generate exempt income. The possibility of incurring certain expenditure under the head administrative expenditure for earning dividend income cannot be ruled out. While allocating expenses relating to exempt income not only the direct expenses like receiving and depositing the dividend warrant have to be taken into consideration but also the indirect expenses

including major managerial/ clerical expenses which are involved in making and implementing the decision are also to be disallowed.

Accordingly, the amount of expenditure in relation to such income was determined in accordance with the provisions of Rule 8D of IT Rules, 1962 as under:-

(i)	Interest expenditure directly incurred for earning exempt income:	NIL
(ii)	1% of average Investment (23,20,00,998%)	Rs. 23,20,009/-
	Investment as on 31.3.2018:	Rs. 27,00,23,608/-
	Investment as on 31.3.2017 :	Rs. 19,39,78,388/-
	Total :	Rs. 46,40,01,996/-
	Average: Rs. 2320,00,998 i.e.	Rs. 46,40,01,996/2

Accordingly, Id. AO made disallowance u/s 14A worked out to Rs. 23,20,009/- and the same was treated as expenditure incurred in relation to earn exempt income. Hence, the amount of Rs. 23,20,009/- was disallowed u/s 14A of the IT Act and added back to the taxable income of the assessee.

4. Aggrieved by the order of the National Faceless Assessment Center, assessee preferred an appeal before the NFAC/CIT(A). Apropos to the grounds so raised the relevant finding of the NFAC/CIT(A) is reiterated here in below:

“6. Discussion and Decision:

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6.5 The disallowance cannot be more than the exempt income:-

Finally, the appellant has submitted that the dividend income earned during the year is Rs.8,55,037/- and the amount disallowed u/s 14A is Rs.23,20,009/-,

The appellant has submitted plethora of judgements to show that the amount of disallowance cannot be more than the exempt income earned. Following are the judicial pronouncements relied by the appellant:-

1. Hon'ble Supreme Court in the case of CIT(Central)-1 vs. Chettinad Logistics Pvt. Ltd.
2. Hon'ble Supreme Court in the case of PCIT-18 vs. Oil Industry Development Board.
3. Supreme Court of India Principal Commissioner of Income Tax, Patiala vs. State Bank of Patiala.
4. Supreme Court of India in the case of CIT vs. Chettinad Logistics (P) Ltd
5. VBC Ferro Alloys Ltd vs. ITO Wrd-17(1), Hyderabad
6. Assistant Commissioner of Income-tax, Company Circle-1(2), Chennai v. M. Baskaran
7. Hon'ble ITAT Jaipur Bench in the case of Road Infrastructure Development Company of Rajasthan Ltd.

I have considered the above submissions and the relevant decisions quoted by the appellant. Respectfully, following the decisions in the above case, I hereby hold that the maximum disallowance u/s 14A can be restricted to the amount of exempt income earned by the appellant. In the present case, the appellant had earned exempt income of Rs.8,55,037/- and the disallowance can be restricted to the same amount.

Hence, this ground of appeal is treated as partly allowed.”

5. As the assessee did not receive the relief in full and was considered in part by the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the grounds as reproduced hereinabove. To support

the various grounds so raised by the Id. AR of the assessee filed the written submissions which are reproduced herein below:

3. Submission of Appellant on grounds of appeal: -

3.1 Ground No. 1: - Regarding the addition made u/s 14A of the Income Tax Act, 1961.

3.1.1 Finding of Ld. A.O: -

The finding of Id. AO is at Page No. 4 and 5 (Para 4.4 to 4.6) of the assessment order. On the basis of his findings in para 4.4 to 4.6, the Id. AO invoked the provisions of section 14A of the Act and made the resulted addition as under:-

1) Interest expenditure directly incurred for earning exempt income  
Nil

2) 1% if average investment Rs. 23,20,009/-

Investment as on 31.03.2018 Rs. 27,00,23,608/-

Investment as on 31.03.2017 Rs. 19,39,78,388/-

Total Rs. 46,40,01,996/-

Average Rs. 23,20,00,998 i.e. Rs. 46,40,01,996/2

3.1.2 Finding of Ld. CIT(A): -

Finding of Ld. CIT(A) is in para 6 running from page 7 to 12. The Id CIT(A) confirmed the addition of Rs.8,55,037/-, out of total addition of Rs. 23,20,009/- made by Ld. A.O. u/s 14A of the Act, which is to the extent exempt dividend income earned by appellant

3.1.3 Submission of Appellant: -

3.1.3.1: - The investments were made by the assessee out of own funds and no expenses were incurred for investment/exempt income

Although the Id AO himself has not made any addition on account of interest and has accepted that the assessee has not utilised the borrowed funds to invest in tax free generating investments. However, the Id CIT(A) held in para 6.1 that the investments were made by the appellant out of his own funds does not sustain and has no merit.

In order to controvert the findings of Ld CIT(A), we submit that out of total investments of Rs. 27,06,23,113/- (PB page 15) the investments of Rs. 7,63,44,725/- [27,06,23,113-19,42,78,387.50] were only made during the year and the investment in the same was made by the assessee company from own funds.

This fact is evident from the Balance Sheet of the assessee company; from examination of which your honour will find that shareholder fund and reserve and surplus as per Note No. 2 & 3 of the audited financial statement as on 31/03/2018 (Copy at PB Page No. 15) is Rs. 67,14,10,652/- which is more than total investment in equity shares as on 31/03/2018 is of Rs 27,06,23,112/-. Thus, shareholder fund is sufficient to make this much investment. The Id AO himself has not made any addition on account of interest cost.

3.1.3.2: - No further expenses, over & above to whatever already disallowed by the assessee, were incurred in relation to investment activities and assessee was not required to incur any other expenses

1. Sec. 14A talks of the relation between the expenditure and the exempt income.

For applicability of section 14A, we have to view the items of expenditure first. If these have resulted in exempt income, only then the disallowance is to be considered. In other words, the starting point for applying section 14A is to consider the amount of expenditure and then moving forward for examining if it has resulted in the exempt income or not. The language of sub-section (1) of section 14A clearly provides that no deduction shall be allowed "in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act". On going through the simple and plain language, it is abundantly clear that the relation has to be seen between the exempt income and the expenditure incurred in relation to it. What is relevant is to work out the expenditure in relation to the exempt income. On going through sub-section (1), it can be clearly noticed that the exercise of making disallowance starts with firstly tracing out the exempt income and then initiating the process of working out the expenditure incurred in relation to such exempt income.

2. The object behind the insertion of section 14A in the said Act is apparent from the Memorandum explaining the provisions of the Finance Bill 2001 which is to the following effect:-

*"Certain incomes are not includable while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. It is proposed to insert a new section 14A so as to clarify the intention of the Legislature since the inception of the Income – tax Act, 1961, that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act. The*

*proposed amendment will take effect retrospectively from April 1, 1962 and will accordingly, apply in relation to the assessment year 1962-63 and subsequent assessment years.”*

It is not sufficient if it is shown that there was an expense. It is necessary to establish that there is a nexus between the income earned and the expense occurred. Therefore, there must be nexus in between the expenditure and exempted income for disallowance of expenses u/s 14A which is not in our case.

3. The provisions of section 14A r.w.r. 8D of Income Tax Rules, can only be invoked if any expenses are incurred in relation to income not includible in total income. For making the disallowance, the conditions precedent u/r 8D are to be satisfied. For ready reference the provisions of rule 8D are reproduced hereunder:

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*(1) Where the Assessing Officer, having regard to the accounts of the assessee of previous year, is not satisfied with –*

*(a) the correctness of the claim of expenditure made by the assessee;*  
or

*(b) the claim made by the assessee that no expenditure has been incurred,*

*in relation to income, which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).*

In case of assessee no such expenses have been identified by Ld. A.O. and also the claim of assessee of not incurred any further expenses was disproved by the Ld. A.O. In the regard the following finding of Ld AO in para 4.5 page 5 of Astd Order is relevant to be mention: -

*4.5 The invocation of Section 14A is automatic and comes into operation without any exception even if exempt income is not earned during the year if investment is such which would generate exempt income. The possibility of incurring certain expenditure under the head administrative expenditure for earning dividend income cannot be ruled out. While allocating expenses relating to exempt income not only the direct expenses like receiving and depositing the dividend warrant has to be taken into consideration but also the indirect expenses including major managerial/ clerical expenses which are involved in making and implementing the decision are also to be disallowed. The disallowance of administrative expenses and interest expenses on earning of dividend income claimed exempt is also held/permitted by the Hon'ble Supreme Court in the case of CIT vs. United General Trust, 200 ITR 488 (SC).*

From view of the above finding, it is explicitly clear that the Ld. A.O. only gave a general finding and proceed to make the disallowance on the basis of such general finding which is sheer presumption and assumption and the same is

not in accordance with the provisions of the law. If the statement of the profit & loss a/c (PB page 16) is perused it reveals that the indirect expenses includes the following :-

Head of expenses	Justification
Employee Benefit Expenses	All the expenses incurred for making to/for the employee, which were appointed for regular manufacturing business activities of the assessee. further, the investment activities are not regularly undergone by the assessee company, therefore it was not required to appoint the staff for such activity.
Other administrative & selling expenses	From perusal of the nature of such expenses it is apparent that the expenses are of the nature, which were incurred in relation to the day-to-day manufacturing business operation of the assessee and have no relevance with the investment activities of the assessee company.
Finance Cost	The cost is incurred for the funds utilized for the business activities and accepting the same the Ld. A.O. himself not made any disallowance of interest.
Depreciation & Amortization expenses	The depreciation claimed in the assets, which were being used for the business of the assessee and looking to the value of investment activities no assets was required to the assessee company.

All the expenses debited in statement of P & L, except D-Mat expenses and share transaction charges, were incurred in relation to manufacturing business operations of the assessee and such expenses were not attributable to investments or exempted income. The expenses on account of D-mat charges Rs. 1,660/- (PB pg 2) and STT & Share Transaction charged Rs.6,27,888/- (PB pg 2) has already been disallowed in ITR.

4. It is relevant to mention here that the nature of investments and volume of transactions was not that much for which any further separate expenses were required to be incurred by the assessee company and thus for such investments no separate other expenses were incurred by the assessee company. The assessee has dealt in shares and securities in very limited numbers; for short term capital gain only in 10 companies' shares and for long term capital gain only in 3 companies shares (PB page 3). In the assessment order also the Ld. A.O. could not point out any such expenses, which might be incurred by the assessee for investment activities.

5. During the course of assessment proceedings, the assessee had submitted that it has not incurred any expenses, over & above to whatever already disallowed by itself in computation of Total Income (PB page 2), for making the investments or earning the income there from and the Ld. A.O. could not disprove to this fact. Hon'ble Supreme Court in the case of CIT V/s Walfort Shares & Stock Brokers Pvt. Ltd (326 ITR 1)( Case Law Paper Book page 1-11) it was held that *for attracting section 14A, there has to be a proximate cause for disallowance which is its relationship with the tax-exempt income.*

6. The Id. A.O. on the basis of surmises and conjecture hold that the possibility of incurring certain expenditure under head administrative expenditure for earning dividend income cannot be ruled out but he did not bring any positive material to disprove the claim of the assessee.

7. Invocation of provisions of section 14A are not automatic

a) Before making disallowance u/s 14A of the Act the Id. A.O. needs to record satisfaction that suo-moto disallowance under Section 14A was not correct. The Ld. CIT (A) wrongly held that the Ld. A.O. has recorded the satisfaction. However, from the assessment order it is clear that no clear and cogent satisfaction was recorded regarding the incurring of expenses for the investment, over and above to whatever disallowed by the assessee. In the assessment order, the Ld. A.O. applied the provisions of section 14A of the Act, on the basis of preponderance of probabilities and possibilities. In the assessment order in para 4.5, the Ld. clearly held that the invocation of provisions of section 14A are automatic. In this regard it is worth relying on the decision of Hon'ble Rajasthan High Court in the case of PCIT-Kota V/s Prakash Gwalera 2018 (11) TMI 877, (Case Law Paper Book page 58-63), wherein Hon'ble court held as under: -

*Addition u/s 14A - Held that: - As decided in GODREJ & BOYCE MANUFACTURING COMPANY LIMITED VERSUS DY. COMMISSIONER OF INCOME-TAX & ANR [2017 (5) TMI 403 - SUPREME COURT OF INDIA] expenses allowed can only be in respect of earning of taxable income.*

*Therefore, one needs to read the words "expenditure incurred" in Section 14A in the context of the scheme of the Act and, if so read, it is clear that it disallows certain expenditure incurred to earn exempt income from being deducted from other income which is includible in the "total income" for the purpose of chargeability to tax.*

*No mention of the reasons which had prevailed upon the AO, while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances - Decided in favour of assessee.*

On the same issue the Hon'ble Rajasthan High court in the case of Vijay Solvex Limited V/s ACIT 2018 (1) TMI 1629 (Case Law Paper Book page 64-67) held as under: -

*Disallowance u/s 14A r.w.r. 8D - As argued assessee has reserves and surplus far in excess of the investment made in the year during the relevant assessment year - HELD THAT:- As decided in own case [\[2017 \(8\) TMI 1449 - RAJASTHAN HIGH COURT\]](#) we do not find any mention of the reasons which had prevailed upon the Assessing Officer, while dealing with the Assessment Year 2002- 2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the AO, particularly, in the absence of any new fact or change of circumstances.*

*Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the Assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available remains unproved by any material whatsoever. While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. - Decided in favour of the assessee*

Thus, the onus was on Ld. A.O. to disprove the claim of the assessee regarding non incurring the expenses to earn exempt income or for making investment, over and above to what has already been disallowed by the assessee itself. The Ld. A.O. rejected the submission of the assessee by simply holding that the onus is on assessee to prove that it did not incur any expenses. Once, the assessee denied of incurring any expenses, no further evidence is required to prove its contention.

b). Further, it is submitted that sub-section (2) of section 14A empowers the AO to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the AO, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income. Similar is the requirement under Rule 8D(1). In the case of Appellant though the AO has made the disallowance by relying on the provisions of section 14A but he has not complied with the conditions as stipulated in section 14A(2)/Rule 8D(1).

He has not recorded any satisfaction with regard to the incorrectness of claim of the Appellant having regard to the accounts of the Appellant or reasons for not being satisfied with the claim of the Appellant. The assessment order nowhere speaks that Ld. A.O. was satisfied for invoking the provision of Section 14A of the Act.

c) The Ld. A.O. and Ld. CIT(A) has not considered the submission of the assessee in judicial perception. The assessee has submitted that it has not incurred any other expenses, except to whatever already disallowed, for making the investment. The Ld. A.O. has not pointed out how the expenditure incurred by assessee during relevant year related to income not forming part of its total income. Reliance is placed on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax v. Sociedade De Fomento Industrial (P.) Ltd [2020] 429 ITR 358 (Bom) it was held that:-

*"19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(l) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO, according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section 14A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer."*

d) Reliance is placed on following case where it is held that the provisions of section 14A are not automatic

i) Hon'ble Supreme Court of India in Maxopp Investment Limited V. Commissioner of Income Tax (2018) 91 Taxmann.com 154 (SC) has examined the scope of Rule-14A vis-a-vis Rule-8D in detail. The pertinent part of the judgment of Hon'ble Apex Court is reproduced below for your kind perusal.

*"32. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."*

ii) GODREJ & BOYCE MANUFACTURING COMPANY LIMITED V. DY. COMMISSIONER OF INCOME-TAX & ANR. [2017] 394 ITR 449 wherein it has been held that

Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of assessee. This Court accordingly concluded that for attracting provisions of Section 14A, the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi's judgment reads as follow:

*"36. .... what cannot be denied is that the requirement for attracting the provisions of Section 14-A (1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income....."*

iii) M/s. Ruby Merry Enterprises (P) Ltd. vs. JCIT (OSD) Central Circle-3, Jaipur 2016 (10) TMI 1278 - ITAT JAIPUR. The findings of Hon'ble ITAT are in para 3.3 is reproduced as under:

*"3.3. We have heard the rival contentions and perused the materials available on record. As regards Ground No. 1 raised by the assessee, it is noted that such issue has already been decided in favour of the assessee by the ITAT, Jaipur SMC Bench in assessee's own case (supra). The observation of ITAT Jaipur SMC Bench (supra) is reproduced as under :*

*"3. I heard the rival submissions and carefully considered the same along with orders of tax authorities below,. I noted that the AO noted that the assessee had paid interest @ 9% on the investment made against the share application money. The bank statement of the assessee revealed that the payment of Rs. 80,00,000/- was made by the assessee on 13.2.2008 and another payment of Rs. 80,00,000/- was made on the same date against the share application money of M/s. Career Point Infosystem Ltd. No shares were allotted against the investment in share application money. The amount of Rs 1,60,00,000/- was returned back on 28.8.2008. The AO, therefore, worked out the interest @ 9% on the investment made against share application money from 1.4.2008 to 28.8.2008 at Rs. 6,00,000/- and disallowed the same under section 14A. It is the undisputed fact that the assessee has not claimed any disallowance in relation to the investment made in share application money under the provisions of section 14A. The provisions of section 14A(1) states that no deduction shall be made in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income. Sub-section (2) of section 14A empowers the AO to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the AO, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income. Further, sub-section (3) of section 14A empowers the AO to apply sub-section (2) in a case where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total*

*income. In this case I noted that even though the AO has made the disallowance by relying on the provisions of section 14A but he did not comply with the conditions as stipulated in section 14A(2). He has not recorded any satisfaction with regard to the incorrectness of claim of the assessee having regard to the accounts of the assessee having no such evidence or material brought to my notice by the Id. D/R which may show that the AO has given a finding on the basis of accounts maintained by the assessee that he is not satisfied with the claim of the assessee. Even the AO has not recorded the satisfaction as regards to the claim of the assessee. He is bound to compute the disallowance in accordance with such method as may be prescribed. In this regard it is the rule 8D which has been notified with effect from 24.03.2008. The assessment year involved is the assessment year 2009-10. I do not find any whisper whatsoever by the AO or by the Id. D/R that the AO has computed the disallowance by applying Rule 8d. In view of this fact, I am of the view that it is a case where no disallowance can be made. I accordingly set aside the order of Id. CIT (A).*

4. *In the result, appeal filed by the assessee is allowed.”*

*Respectfully following the decision of ITAT Jaipur SMC Bench in assessee’s own case for the assessment year 2009-10 (supra), the appeal of the assessee on the issue in question is allowed.”*

iv) Hon’ble ITAT Jaipur in the case of DCIT Circle-2, Jaipur vs. M/s. AU Financiers India Ltd. 2016 (11) TMI 710 - ITAT Jaipur. In this case Hon’ble ITAT has followed its own finding in assessee’s own case for A.Y. 2011-12. The relevant findings as reproduced in the order are as under:-

*“The above finding on fact by the Revenue is not controverted by placing any material on record. Moreover there is no dispute with regard to fact that the assessee has earned exempt income of 27,006/- against which disallowance of expenditure amounting to 42,22,857/- was made. The AO has not recorded his satisfaction as to how the expenditure disallowed by the assessee of 629878/- towards administrative expenses is not reasonable. Further we find that the assessee has demonstrated by placing sufficient material on record that no borrowed funds were utilized for making investment and wherefrom the exempt income is earned. In our considered view, the provisions of section 14A of the Act read with rule 8D of Income Tax Rules, cannot be invoked in mechanical way by AO. As per section 14A(2), the AO is required to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act and in accordance with rule 8D of Income Tax Rules, 1961 if the AO having regard to the accounts, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to such exempt income, is empowered for making disallowance as per rule 8D. In the case in hand, no finding is recorded by the AO in this regard. On the contrary, the Id. CIT (A) has given a finding after examining the accounts of the assessee. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the incomer which do not form part of the*

*total income. Moreover it is not in dispute that the assessee has earned exempt income of Rs. 27,006/- and expenditure amounting to 42,22,857/- in relation to this is disallowed. The finding of the Id. CIT (A) is not rebutted by revenue by placing any contrary materials. Therefore, we do not see any reason to interfere with the order of the Id. CIT (A). The same is hereby upheld. The ground raised by the Revenue is dismissed.”*

v) In CIT v Hero Cycles Limited [323 ITR 518] the hon'ble court held that disallowance under section 14A was not permissible where there was no nexus between the expenditure incurred and the income generated.

(vi) Hon'ble High Court of Gujarat passed in Principal Commissioner of Income Tax-4 V/s Sintex Industries Ltd (2018) 403 ITR 418 (Gujarat).

*“9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of ₹ 1981.55 Crores against which investment was made of ₹ 144.51 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of ₹ 24,37,500/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated hereinabove, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of ₹ 24,37,500/- incurred in respect of interest and administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Principal Commissioner of Income-tax vs. India Gelatine & Chemicals Limited, reported in [2015] 376 ITR 553 [Gujarat] needs a reference. In the said decision, it is observed and held by the Division Bench of this Court that when the assessee had sufficient interest-free funds out of which concerned investments had been made, disallowance under Section 14A is not justified.”*

*The SLP filed against the said judgment has been dismissed by Hon'ble Supreme Court of India, in Principal Commissioner of Income Tax-IV, Ahmedabad V. Sintex Industries Ltd (2018) 93 taxmann.com 24 (SC).*

(vii) Emtici Engineering Ltd. Versus ACIT (OSD). Anand Circle, Anand 2016 (3) TMI 186 - ITAT Ahmedabad.

*“It was noted from records that the assessee was having share holding funds to the extent of 2607.18 crores and the investment made by it was to the extent of Rs. 195.10 crores. In other words, the assessee had sufficient funds for making the investments and it had not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the revenue which earned it the interest on bonds and dividend income.*

*With regard to disallowance of 1% of administrative expenses averred to have incurred on account of the earning of interest, there is nothing on record to indicate that there has been in fact any actual expenditure incurred by the assessee for earning tax free income of Rs. 14 crores. It is also to be noted that out of the total amount of exempt income of Rs. 14 crores, the assessee could point out that 6.12 crores (rounded off) was earned by 'S' project which was under construction for which no expenditure had been claimed and for the remaining income of Rs 7.88 crores which consists of dividend and tax free interest, no part of expenditure appears to have been made towards the investment activity as emerging from the material. According to the respondent, the total investment from the huge surplus is comparatively small and investment made was effortless, without any burden of administrative expenses.*

*In view of fact that no expenditure was incurred for earning exempted income and that being the question of fact, disallowance of 1% of interest expenditure artificially or on the basis of assumption rightly has not been sustained by the Tribunal.*

*The revenue's appeal therefore, requires no further entertainment and hence dismissed."*

3.2 Ground No. 2: - The assessee does not want to add, alter and amend any of grounds of appeal.

Prayer of Assessee: -

The humble assessee prays your honour kindly to delete the addition made by Ld. A.O and sustained by Ld. CIT(A) and allow the appeal of assessee."

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1.	Copy of ITR and Computation of total income for AY 2018-19 filed u/s 139(1).	1 to 5
2.	Copy of Company Audit Report, Audited Balance Sheet and Statement of Profit and Loss A/c for the year ended 31/03/2018	6 to 37
3.	Copy of reply dated 16.02.2021 filed during assessment proceedings.	38 to 44
4.	Copy of reply dated 22.03.2021 filed during assessment proceedings.	45 to 49
5.	Copy of Written Submission filed before CIT(A) NFAC	50-71

**Case laws relied upon:**

S. No.	Particulars	Page No.
Hon'ble Supreme Court		
1	CIT V/s Walfort Shares & Stock Brokers Pvt. Ltd (326 ITR 1)	1-11
2	CIT V/s Reliance Industries Ltd Appeal No. 10 to 13 of 2019 order dated 02.01.2019	12-14
3	South India Bank Limited v/s CIT CIVIL APPEAL NO. 9606 OF 2011 dated 09.09.2021	15-21
4	Maxopp Investment Limited V. Commissioner of Income Tax (2018) 91 Taxmann.com 154 (SC)	22-38
5	Radhasoami Satsang vs. Commissioner of Income-Tax (1992) 193 ITR (SC) 321	39-44
6	Godrej & Boyce Manufacturing Company Limited V/s Dy. Commissioner of Income-Tax & Anr. [2017] 394 ITR 449	45-57
Hon'ble Rajasthan High Court		
7	PCIT-Kota V/s Prakash Gwalera 2018 (11) TMI 877	58-63
8	Vijay Solvex Limited V/s ACIT 2018 (1) TMI 1629	64-67
9	Commissioner of Income Tax Vs. Vijay Solvex Ltd. 274 CTR 384 Rajasthan (2015) 59 taxmann 294	68-71
Other Non-Jurisdictional High Court		
10	Commissioner of Income Tax v. Sociedade De Fomento Industrial (P.) Ltd [2020] 429 ITR 358 (Bom)	72-79
11	Hon'ble High Court of Gujarat passed in Principal Commissioner of Income Tax-4 V/s Sintex Industries Ltd (2017) 82 taxmann.com 171 (Gujarat).	80-84
12	CU Vs Hero Cycles Ltd (323 ITR 518)	85-87
13	Commissioner of Income-tax, Bangalore v. Karnataka State Industrial & Infrastructure Development Corpn. Ltd. [2016] 237 Taxman 240 (Karnataka)	88-92
14	Commissioner of Income-tax-I v. Gujarat State Fertilizers & Chemicals Ltd[2013] 358 ITR 323 (Gujarat)	93-99
Hon'ble ITAT Jaipur Bench		
15	Career Point Limited Versus The Principal Commissioner of Income-Tax, Udaipur ITA No. 242/JPR/2023 A.Y. 2018-19 order dated 25-08-2023	100-132
16	M/s. Ruby Merry Enterprises (P) Ltd. vs. JCIT (OSD) Central Circle-3, Jaipur 2016 (10) TMI 1278	133-136
17	DCIT Circle-2, Jaipur vs. M/s. AU Financiers India Ltd. 2016 (11) TMI 710	137-140
Hon'ble Other ITAT		
18	Emtici Engineering Ltd. Versus ACIT (OSD). Anand Circle, Anand 2016 (3) TMI 186 - ITAT Ahmedabad	141-147

7. The Id. AR of the assessee in addition to the above written submissions vehemently argued that Id. CIT(A) has not appreciated

the fact that while computing the income, the assessee has already disallowed the expenses related to the exempt income for an amount of Rs. 16,604 for demate charges, share transactions charges for an amount of Rs. 6,27,788/- and interest relating to the transaction of shares undertaken by the assessee for an amount of Rs. 81,153/-, totaling Rs. 7,25,545/- against the exempt income of Rs. 8,85,086/- and therefore the same amount which is already considered for disallowance is required to be deducted but the same was not considered. Therefore, the appeal was preferred by the assessee. Even otherwise, the learned counsel argued that Assessing Officer failed to appreciate that the assessee has sufficient amount of interest free fund in the form of capital to make investment yielding exempt income, therefore, addition under section 14A of the Act did not get attract.

8. Per contra, Id. DR relied upon para 6.4 of impugned order wherein the detailed finding has been recorded by Id. CIT(A) stating that.

“6.4 Presumption that investment are made from the interest free funds:

By relying upon the decision in the case of Reliance Industries Ltd, (supra) the appellant had submitted that if the interest free funds were available, the appellant to meet some of his investment, it could not be presumed that the investments were made from the interest free funds available with the appellant. As on 31.03.2017, the investments were of Rs, 19.42 crores and the appellant had submitted that the current year's profit of Rs.11.28 crores would be sufficient for the above investment. As on 31.03.2018, the Investments were of Rs.27.06 crores and the investment is more than the current year's profit it cannot be presumed in the appellant's case that there were sufficient funds available to

meet out the investments. The available own funds are less than the investments made by the appellant. This issue is elaborately discussed in para no. 6.1 of this order Hence, with due respect to the Court, the decision in the case of CIT vs. Reliance Industries Ltd (supra) is not applicable in the case of the appellant and clearly distinguishable with the fact.”

Ld. DR for the revenue has argued that the assessee had exempt income but the assessee did not disallow correct expenditure and other administrative expenditure, as per section 14A r.w.r. 8D of the Act, and therefore Assessing Officer was right in making the addition.

9. We have heard rival contentions and perused the material placed on record. In the present appeal, the assessee has taken four different grounds challenging the addition sustained by the Id. CIT(A). Though we have discussed the basis of making the addition in the earlier part of this order, the point in dispute is that assessee filed return of income declaring total income of Rs. 11,07,21,870/- under normal provision of Income Tax and Rs. 11,28,92,617/- u/s 115JB of the Act.

The case was selected for scrutiny under CASS. In that scrutiny proceeding Id. AO noted that assessee invested in equities shares to the amount of Rs. 27,00,23,608/-. That investment generate exempt income in the form of dividend income, to earn that income the managerial / administrative cost for arranging such a type of investment cannot be

denied. Thus, Id. AO noted that the assessee failed to prove nexus between interest free investment out of surplus & reserves available, and thereby relying on the CBDT's Circular No. 5/2014 dated 11.02.2014 that section 14A of the Act does not use the word "income of the year but "income under the Act" therefore, to invoke disallowance u/s. 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration. The onus of the assessee had not been proved and therefore, Id. AO found that there is a clear nexus between the investments made and expenses claimed by the assessee.

Accordingly, the amount of expenditure in relation to such income was determined in accordance with the provisions of section 14A r.w.r.8D and thereby Rs. 23,20,009/- was disallowed u/s 14A of the IT Act and added back to the taxable income of the assessee.

10. When the assessee carried that matter before the Id. CIT(A) based on the various case laws cited there in Id. CIT(A) restricted the addition u/s. 14A to the extent of the exempt income of Rs.8,55,037/-.

11. That finding of the Id. CIT(A) is under challenge before us and in support of the grounds so raised Id. AR of the assessee submitted that Assessing Officer failed to appreciate that the assessee had enough interest

free fund in form of capital and reserve and surplus to make investment yielding exempt income, therefore, addition u/s. 14A of the Act was not attracted. As is evident assessee made total investments of Rs. 27,06,23,113/- (PB page 15) the investments of Rs. 7,63,44,725/- [27,06,23,113-19,42,78,387.50] were only made during the year and the investment in the same was made by the assessee company from own funds. This fact is evident from the Balance Sheet of the assessee company and on examination of which it is also obvious that shareholder fund and reserve and surplus as per Note No. 2 & 3 of the audited financial statement as on 31/03/2018 (Copy at PB Page No. 15) is Rs. 67,14,10,652/- i.e. more than total investment in equity shares as on 31/03/2018 is of Rs 27,06,23,112/-. Thus, shareholder fund was sufficient to make this much investment. The Id AO himself has not made any addition on account of interest cost. Even the Id. CIT(A) has not appreciated the fact that assessee had already disallowed the expenses related to the exempt income for an amount of Rs. 16,604/- for demate charges, share transactions charges for an amount of Rs. 6,27,788/- and interest relating to the transaction of shares undertaken by the assessee for an amount of Rs. 81,153/-, totalling Rs. 7,25,545/- against the exempt income of Rs. 8,85,086/- and, therefore, the same amount which is already considered for

disallowance is required to be deducted but the same was not considered while sustaining of the addition by Id CIT(A). Even otherwise, the learned counsel argued that Assessing Officer failed to appreciate that the assessee has enough interest free fund in form of capital to make investment yielding exempt income, therefore, addition under section 14A of the Act was not attracted. As is clear from the fact that assessee made total investments of Rs. 27,06,23,113/- (PB page 15) as against that shareholder fund and reserve and surplus as per Note No. 2 & 3 of the audited financial statement as on 31/03/2018 (Copy at PB Page No. 15) is Rs. 67,14,10,652/- which is more than total investment in equity shares as on 31/03/2018 is of Rs 27,06,23,112/-. Thus, shareholder fund is sufficient to make investment. Facts of the case are similar to the facts of the case decided by the Hon'ble High Court of Gujarat in the case of Principal Commissioner of Income Tax-4 V/s Sintex Industries Ltd (2018) 403 ITR 418 (Gujarat) and cited behalf of assessee wherein the Hon'ble High Court held that

*"9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of Rs.1981.55 Crores against which investment was made of Rs. 144.51 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of Rs. 24,37,500/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated hereinabove, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of Rs. 24,37,500/- incurred in respect of interest and*

*administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Principal Commissioner of Income-tax vs. India Gelatine & Chemicals Limited, reported in [2015] 376 ITR 553 [Gujarat] needs a reference. In the said decision, it is observed and held by the Division Bench of this Court that when the assessee had sufficient interest-free funds out of which concerned investments had been made, disallowance under Section 14A is not justified.”*

*The SLP filed against the said judgment has been dismissed by Hon'ble Supreme Court of India, in Principal Commissioner of Income Tax-IV, Ahmedabad V. Sintex Industries Ltd (2018) 93 taxmann.com 24 (SC).*

Respectfully, following that decision relied on and since the assessee has against the exempt income of Rs. 8,85,086/-, Rs. 7,25,545/- already disallowed in the computation of income [ page 2 of the paper book filed ] which has not been disputed by the revenue before us, we see no reason to sustain the addition of Rs. 8,55,037/-. Based on this observation ground no. 1.1 to 1.4 are allowed. Ground no. 2 is general and does not require any adjudication.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/01/2025.

Sd/-  
(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(राठौड़ कमलेश जयन्तभाई)  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- /01/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Agrasen Engineering Industries Pvt. Ltd., Jaipur
2. प्रत्यर्धी / The Respondent- National E-Assessment Centre
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1085/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar