

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
(Conducted through Virtual Court)
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI AMARJIT SINH, ACCOUNTANT MEMBER

ITA No.1124 and 1125/Ahd/2018

निर्धारण वर्ष/ Asstt.Year : 2010-2011

DCIT, Cent.Cir.2(3) Ahmedabad.	Vs.	M/s.Raj Jay Investment P.Ltd. 4 th Floor, Pariseema Complex Opp: Swagat Building Opp: Bodyline C.G.Road, Ahmedabad. PAN : AAACR 7471 D
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ITA No.1435 and 1436/Ahd/2018

निर्धारण वर्ष/ Asstt.Year : 2009-2010

M/s.Raj Jay Investment P.Ltd. 4 th Floor, Pariseema Complex Opp: Swagat Building Opp: Bodyline C.G.Road, Ahmedabad.	Vs.	DCIT, Cent.Cir.2(3) Ahmedabad.
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(Applicant)		(Responent)
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Revenue by :	Shri R.R. Makwana, Sr.DR
Assessee by :	Written submissions

सुनवाई की तारीख/Date of Hearing : 20/05/2021

घोषणा की तारीख /Date of Pronouncement: 04/06/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT:

The above four appeals are cross-appeals by the Revenue and the assessee directed against orders of the Id.CIT(A)-7, Ahmedabad of even dated i.e. 12.02.2018 for the above two assessment years. All these four appeals are disposed of by this common order for the sake of convenience.

2. Before dealing with the issues on merit, it is pertinent to mention here that these are recalled matters. The appeals of the Revenue were dismissed on account of low tax effect. The Revenue had filed Misc. Applications for recall of the order of the Tribunal in ITA Nos.156/Ahd/2018 and 125 others dated 31.7.2018 *qua* the above assessee, because case of the Revenue falls within exception provided in clause 10(c) of the CBDT Circular No.3 of 2018. After hearing the MA, the Tribunal recalled the order dated 31.7.2018 *qua* the above assessee, and directed to list the appeals for adjudication on merit. Accordingly, the above appeals came up for hearing before us for adjudication on merit.

3. Sole issue raised in both appeals of the Revenue is that the Id.CIT(A) has erred in restricting disallowance under section 14A of Rs.24,03,566/- to Rs.2,37,810/- in the Asstt.Year 2009-10, and Rs.16,33,651/- to Rs.4,43,802/- in the Asstt.Year 2010-11. While in the cross appeals, assessee has challenged disallowance of administrative expenses at the rate of 0.5% of the average value of investment under Rule 8D(2)(iii) of the Income Tax Rules. Since issue and the facts are identical except variation in quantum in both the years, we take the facts given in the Asstt.Year 2009-10 for the convenience of adjudication.

4. Brief facts of the case are that in the case of the assessee, assessment was framed under section 153A r.w.s. 143(3) of the Act. Subsequently, the case of the assessee was reopened under section 147 of the Act and assessment was finalized under section 143(3) r.w.s. 147 by making an addition of Rs.24,03,566/- for A.Y.2009-10 and

Rs.16,33,651/- for A.Y.2010-11 under section 14A of the Act, after working out disallowance under Rule 8D of the Income Tax Rules, 1962. Against this disallowance, the assessee preferred appeal before the Id.first appellate authority. The submissions made by the assessee and finding of the Id.CIT(A) thereon are similar in the both years. Therefore, we take note of the submissions made by the assessee and the finding recorded by the Id.CIT(A) for the Asstt.Year 2009-10. It read as under:

"1. The appellant belongs to Jayesh Steel group. The search operation U/s 132 of the act was came out on 13.10.2011. The appellant was covered in search action and notice U/s 153A was issued.

2. The appellant had filed return of income on 18.03.2013 declaring total income of Rs.107599/-U/s. 153A of the Act. Appellant has declared Rs.755910 as income u/s 115JB of the act. Assessment was completed u/s 153A rws 143(3) of the act. Later on case was reopened u/s 147 of the act While finalizing the assessment u/s 143(3) rws 147, the assessing officer has made addition of Rs.24,03,566/- U/s 14A of the Act The disallowance is worked out as per rule 8D of Income Tax Rules.

3. Assessing Officer has erred in making the assessment u/s 147 of the act Assessment order passed u/s 143(3) rws. 147 of the act is untenable in law. Assessment was already finalized u/s 153A rws 143(3) of the act. Assessing officer cannot said to have reason to believe that disallowance should be made u/s 14Aoftheact

4. Therefore order passed u/s 143(3) rws 147 of the act needs to be quashed. Without prejudice to this, we make our submission on merit as below:

5. The details of facts of the case is as under:

<i>Particulars</i>	<i>Amount</i>
<i>Share Capital</i>	<i>11668860</i>
<i>Security Premium</i>	<i>84787500</i>
<i>Capital reserve</i>	<i>1000000</i>
<i>Profit and loss account</i>	<i>1263729</i>
<i>Total own capital</i>	<i>98720089</i>
<i>Investment in shares</i>	<i>94919515</i>
<i>Interest Income</i>	<i>6692823</i>

<i>Interest Expenses</i>	<i>5397991</i>
<i>Net Interest Income</i>	<i>1294832</i>
<i>Dividend Income</i>	<i>653185</i>
<i>Expenses claim</i>	<i>0</i>

On perusal of the above, it will be noticed that -

a) Though there is interest expenses of Rs.5397991/-, there is interest income of Rs.6692823/- and there is a surplus of interest of Rs.1294832/-. As there is net interest income, no disallowance can be made for interest component U/s. HA of the Act.

b) Dividend income is of Rs.653185/- while disallowance is made for Rs.2403566/-. In no case disallowance should exceed exempt income.

c) Appellant is having own capital of Rs.98720089, which is interest free funds of the appellant. Investment in share is Rs.94919515. As own capital is higher then investment in shares no disallowance should be made u/s 14A of the act.

6. The appellant respectfully submits that provisions of Sec. 14A of the Act are not applicable at all. The appellant has not incurred any expenditure for earning exempt income and therefore disallowance cannot be made U/s. 14A of the Act.

7. The appellant further submits that the provisions of Sec. 14-A of the Act cannot be applied summarily. Officer has to record finding that some expenditure is incurred to earn exempt income and therefore only provisions of Sec.14A of the Act cannot be applied. The appellant relies on ITAT judgment of Mumbai in the case of Gravis Hospitality Ltd. vs. DCIT reported in [2015] 53 Toxmann.com 63.

8. The appellant also begs to invite Your Honor's attention to the decision of Delhi HC in the case of Joint Investment Pvt. Ltd. vs. CIT in which it is held that Sec. 14A cannot be interpreted so as to mean that entire exempted income is to be added back.

9. The appellant further submits that he has reed dividend income. In the respectful submission we have to state that dividend income can not be taken as total exempt income. In case of dividend no tax is to be paid by recipient only if dividend distribution tax is paid by company. It means that on sum distributed as dividend, tax is paid but as per legal provision the tax is paid by payer instead of receiver. Therefore it cannot be say that dividend income is totally exempt income. Therefore the provision of section 14(a) should not be applied.

10. The appellant further refers and relies on Guj, HC judgment in the case of Pr. Commissioner of Income Tax-4 vs. Syntex Industries Ltd. Tax appeal no. 268 of 2017. The honorable Gujarat HC has held that when interest free funds are more than investments in shares, no disallowance can be made U/s. 14A of the Act.

11. The appellant also relies on the order of Honorable CITA(A)-12 in the case of Pravinchandra K. Shah ITA no. 106 to 108 dated 28.03.2016. The Id. CITA(A) has deleted addition U/s. 14A of the Act.

12. The appellant therefore submits that the disallowance of Rs.2403566/- be deleted."

3.2 I have carefully considered the assessment order, facts of the case and the submissions made by the appellant. It is seen from the same that the appellant has furnished a detailed chart in respect of its funds, investments, interest earned and interest expenses claimed. It is seen that though the appellant has claimed interest expenses of Rs.53,97,991/-, it also has an interest income of Rs.66,92,823/-. Thus, the appellant has a surplus of interest income to the extent of Rs.12,94,832/-. In the case of ITO v. Karnavati Petrochem Pvt. Ltd., the Hon.ITAT, Ahmedabad has held that when the interest income was more than interest expense and the assessee was having net positive interest income, the interest expenditure could not be considered for disallowance u/s 14A and Rule 8D. Various other courts and tribunals have also held the same view. Therefore, respectfully M following the decision of the jurisdictional Tribunal, the addition made by the AO on account of disallowance of interest is deleted.

3.2.1 However, I am of the opinion that disallowance of administrative expenses @ .5% of the average of value of investment u/r.8D(2)(iii) ie Rs.2,37,810/- has been correctly made by the AO and the same is upheld. The ground of appeal is partly allowed."

5. As noted above, the Id.CIT(A) deleted disallowance under section 14A of the Act by holding that since the assessee has interest income more than the interest expenses, and the assessee was having net positive interest income, no disallowance is required to be made under section 14A read with rule 8D. However, the Id.CIT(A) restricted the disallowance administrative expenses at 0.5% of the average value of investment under rule 8D(2)(iii). Now, Revenue is aggrieved by the restriction of disallowance under section 14A while

the assessee is aggrieved that no disallowance should be made under section 14A of the Act, as own capital is higher than the investment in shares.

6. Before us, the ld.DR supported order of the AO. He further submitted that the assessee has not furnished fund flow statement to establish that surplus fund or interest free funds were utilized for investment, which earned exempt income. Therefore, in the absence of demonstrative evidences, the ld.AO has rightly invoked provisions of section 14A of the Act and Rule 8D, which deserves to be confirmed and order of the ld.CIT(A) be set aside.

7. On the other hand, the assessee has filed written submissions. The assessee supported orders of the ld.CIT(A) so far as disallowance of interest expenditure. Assessee relied on the proposition that when there is net interest income, then no disallowance can take place under Rule 8D, as held in Nirma Credit & Capital Ltd., 300 CTR 286, and that it is the difference between the interest paid and the interest earned which should be considered as assessee's interest expenditure for working out formula prescribed under rule 8D. In other words, for computation of disallowance under Rule 8D, not the gross interest payment, but the net interest payment would be considered. As far as ad-hoc disallowance of administrative expenses at the rate of 0.5% restricted by the ld.CIT(A) as per Rule 8D(iii), this being an adhoc expenses, the assessee prayed to restrict the same to a lumpsum disallowance of Rs.1,50,000/- in each assessment year.

8. We have heard the ld.DR and gone through the submissions filed by the assessee and also orders of the Revenue authorities and

other material available on record. So far as disallowance under section 14A r.w. Rule 8D(2)(ii) are concerned, we have noted that the Id. CIT(A) deleted the disallowances by following the order of ITAT, Ahmedabad ITO Vs. Karnavati Petrochem P.Ltd., wherein it was held that when the interest income was more than the interest expenses, and the assessee was having net positive interest income, the interest expenditure could not be considered for disallowance under section 14A of the Act. We find that the Id. CIT(A) also examined the reserve and surplus fund available with the assessee company, which is more than the investment made by assessee for earning exempt income. No contrary fact or law is brought to our notice by the Revenue to take a different view. Therefore, the ground of appeal raised by revenue in its appeal for A.Y. 2009-10 is dismissed.

9. So far as administrative expenses, the Id.CIT(A) has restricted the same at 0.5% of average value of investment, as per Rule 8D(2)(iii). We find that the assessee has claimed that no expenditure was incurred for earning exempt income, therefore, the assessee prayed since the same being on higher side, a reasonable disallowance be made. Id.CIT(A) has determined the administrative same on adhoc basis, and no nexus has been made between the expenditure incurred and the exempt income. Therefore, to meet the ends of justice, we restrict the disallowance to Rs.1,50,000/- in each assessment year under appeal. This ground is accordingly allowed.

10. In the result, appeal of the Revenue for the A.Y.2009-10 is dismissed, and the appeal of the assessee is partly allowed.

11. As far as Revenue's appeal and the assessee's cross appeal for the Asstt.Year 2010-11 are concerned, the proposition considered by us while deciding the appeals for the Asstt.Year 2009-10, are identically applicable to the Asstt.Year 2010-11 as well. Therefore, we dispose of both appeals of the Revenue and the assessee accordingly.

12. In the result, Revenue's appeals are dismissed and that of assessee are partly allowed.

Order pronounced in the Court on 4th June, 2021 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**