

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 276 of 2015

With

TAX APPEAL NO. 277 of 2015

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

Sd/-

and

HONOURABLE MR.JUSTICE S.H.VORA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PRINCIPAL COMMISSIONER OF INCOME TAX 2....Appellant(s)

Versus

INDIA GELTINE AND CHEMICALS LTD....Opponent(s)

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE S.H.VORA

Date : 27/04/2015

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] As common question of law and facts arise in both these Tax Appeals challenging the impugned common judgment and order passed by the learned Income Tax Appellate Tribunal, both these Tax Appeals are heard, decided and disposed of together by this common judgment and order.

[2.0] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.10.2014 passed by the learned Income Tax Appellate Tribunal, 'B' Bench, Ahmedabad (hereinafter referred to as "Tribunal") in ITA No.611/Ahd/2013 for Assessment Year 2009-10 by which the learned Tribunal has partly allowed the said appeal by deleting the disallowance of the interest expenses under Section 14A of the Income Tax Act, 1961 (hereinafter referred to as "Act") read with Rule 8D of the Income Tax Rules (hereinafter referred to as "Rules") in its entirety, the Revenue has preferred the present Tax Appeal No.276/2015 with the following proposed question of law

"Whether, on facts and in circumstances of the case, the appellate Tribunal is right in deleting the disallowance made on account of interest expenditure u/s 14A r.w.r. 8D though assessee sou-moto disallowed the amount on adhoc basis?"

[2.1] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.10.2014 passed by the learned Income Tax Appellate Tribunal, 'B' Bench, Ahmedabad (hereinafter referred to as "Tribunal") in ITA No.781/Ahd/2013 for Assessment Year 2009-10 by which the learned Tribunal has dismissed the said appeal preferred by the Revenue confirming the deletion of disallowance of interest expenses under Section 14A of the Act read with Rule 8-D of the Rules made by the learned CIT(A) and deleting the disallowance made by the AO under Section 40(a)(ia) of the Act for non-deduction of TDS on overseas freight, the Revenue has preferred the present Tax Appeal No.277/2015 with the following proposed substantial questions of law.

"[A] Whether, on facts and in circumstances of the case, the appellate Tribunal is right in deleting the disallowance made on account of interest expenditure u/s 14A r.w.r. 8D though assessee suo moto disallowed the amount on adhoc basis?"

[B] Whether the Appellate Tribunal has substantially erred in allowing the amount of Rs.21,11,736/- on account of disallowance made u/s 40(a)(ia) of the Income Tax Act on account of non

deduction of TDS on overseas freight when assessee has not submitted details of filing of return u/s 172 of the Act by non resident ship liner?"

[3.0] Facts leading to the present Tax Appeals in nut-shell are as under:

[3.1] That the assessee filed return of income for AY 2009-10 declaring total income of Rs.14,19,79,940/-. The return of income was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny and notices under Section 143(2) were issued and duly served upon the assessee.

[3.2] During the course of assessment proceedings, AO noticed that the assessee had made investment of Rs.21,14,07,850/- in shares and mutual funds. The assessee *suo moto* offered/disallowed amount of Rs.2 lacs on account of Section 14A of the Act. As the AO observed that the assessee is not able to justify that the investment made in shares is from his own funds or from the funds on which no interest payment is made by the assessee and therefore, the provision of Section 14A of the Act is applicable and since the assessee has not offered disallowance worked out under Section 14A of the Act, a show cause notice was issued and served upon the assessee and the assessee was called upon to show cause as to why the disallowance under Section 14A of the Act should not be made. In response to the said show-cause notice the assessee submitted its reply and explanation. Having not satisfied with the explanation given by the assessee, the AO disallowed Rs.14,06,934/- by observing that the assessee made investment in shares and mutual funds amounting to Rs.21,14,07,850/- and interest expenses of Rs.40,10,861/- and that the assessee is not able to justify that the investment was made out of the interest free funds. As the assessee *suo moto* disallowed Rs.2,00,000/- in its computation of income, the effective disallowance was restricted to Rs.12,06,934/-.

[3.3] The AO also disallowed an amount of Rs.1,02,43,720/- under Section 40(a)(ia) of the Act for non-deduction of the TDS on overseas freight.

[3.4] Feeling aggrieved and dissatisfied with the order of assessment passed by the AO of disallowance of the interest expenses under Section 14A of the Act read with Rule 8-D of the Rules and also the disallowance made by the AO under section 40(a)(ia) of the Act for non-production of the TDS on overseas freight, the assessee preferred appeal before the learned CIT(A). That the learned CIT(A) partly allowed the said appeal and deleted the disallowance of Rs.5,84,706/- out of disallowance of Rs.12,06,934/- made by the AO under Section 14A of the Act of amount of disallowance of interest and administrative expenses. Meaning thereby the learned CIT(A) confirmed the disallowance of administration and calculation charges of Rs.6,22,228/- under Section 14A of the Act. The learned CIT(A) deleted the entire disallowance of Rs.14,06,934/- made by the AO under section 40(a)(ia) of the Act for non-deduction of TDS on overseas freight.

[3.5] Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), both the assessee as well as the Revenue preferred Tax Appeal before the learned Tribunal. The assessee preferred appeal being ITA No.611/Ahd/2013 challenging the order passed by the learned CIT(A) insofar as confirming the disallowance of administration and calculation charges of Rs.6,22,228/- under Section 14A of the Act. The Revenue preferred Appeal being ITA No.781/Ahd/2013 challenging the order passed by the learned CIT(A) insofar as deleting the disallowance of Rs.5,84,706/- out of the total disallowance of Rs.12,06,934/- made by the AO under Section 14A of the Act as well as deleting the disallowance made by the AO under Section 14A of the Act for non-deduction of TDS on overseas freight. By impugned common judgment and order the learned Tribunal has allowed the appeal preferred by the assessee being

ITA No.611/Ahd/2013 and has deleted the disallowance made by the AO under Section 14A of the Act in its entirety i.e. the entire amount of Rs.12,06,934/- disallowed by the AO under Section 14A of the Act and consequently dismissed the appeal preferred by the Revenue insofar as challenging the deletion of disallowance made by the learned CIT(A) and also confirmed the order passed by the learned CIT(A) in deleting the disallowance made under section 40(a)(ia) for non-deduction of TDS on overseas freight.

[3.6] Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Tribunal, the Revenue has preferred the present two Tax Appeals with the aforesaid substantial questions of law.

[4.0] Mrs. Bhatt, learned Counsel appearing on behalf of the appellant – Revenue has vehemently submitted that the learned Tribunal has materially erred in deleting the disallowance of interest expenses under Section 14A of the Act in its entirety. It is submitted that the learned Tribunal has not properly appreciated the fact that the dispute with respect to the AY 2009-10 and therefore, Rule 8D of the Rules which had come into force with effect from March 2008 would be applicable. It is submitted that it is neither the learned CIT(A) nor the learned Tribunal which disputed that there were mix kind of expenses and therefore, in that view of the matter Rule 8D would be applicable and therefore, the entire expenditure was required to be disallowed under section 14A of the Act. Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue has heavily relied upon the decision of the Bombay High Court in the case of **Godrej and Boyce Mfg. Co. Ltd. vs. Deputy Commissioner of Income-Tax and Another** reported in [2010]328 ITR 81 (Bom) in support of her submission that Rule 8D could be applicable from assessment year 2008-09 and the expenditures are mix kind of expenditures. Mrs. Bhatt, learned Counsel appearing on behalf of the

Revenue has further submitted that even the learned Tribunal has materially erred in confirming the order passed by the learned CIT(A) deleting the disallowance made by the AO under Section 40(a)(ia) of the Act. It is submitted that while deleting such disallowance the learned Tribunal has not properly appreciated the provisions of the Act more particularly section 172 of the Act. It is submitted that admittedly there was no return filed by the recipient as required under Section 172 of the Act and therefore, section 172 of the Act would not be applicable. It is submitted that therefore both, the learned CIT(A) as well as the learned Tribunal have materially erred in deleting the disallowance made under Section 40(a)(ia) of the Act for non-deduction of TDS on overseas freight.

Making above submissions and relying upon above decision, it is requested to admit / allow the present Tax Appeals.

[5.0] Heard Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue at length.

We have gone through and considered in detail the assessment order as well as the order passed by the learned CIT(A) as well as the impugned judgment and order passed by the learned Tribunal.

[5.1] Now, so far as the deletion of disallowance of interest expenses under Section 14A of the Act by the learned Tribunal / CIT(A) is concerned, it is required to be noted that the AO made the disallowance under Section 14A of the Act on the ground that the assessee was not able to justify that the investments made in the shares and mutual funds amounting to Rs.21,14,07,850/- was made out of the interest free funds. However, it is required to be noted that both, the learned CIT(A) as well as the learned Tribunal have categorically found on the basis of the material on record that as such the assessee was having interest free funds out of which the investment was made. Therefore, by observing in paras 6 to 9 extracted hereinbelow, the learned Tribunal has deleted the entire disallowance of Rs.12,06,934/- made by the AO under section

14A of the Act.

“6. We have heard the rival submissions and perused the orders of lower authorities and material available on record. The undisputed facts of the case are that the Assessing Officer observed that the assessee has made investment of Rs.21,14,07,850/- and the assessee has paid interest on borrowed funds of Rs.40,10,861/-. He also observed that the assessee has not made disallowance of interest expenditure according to section 14A read with Rule 8D of the Act. He therefore computed the proportionate disallowance of interest expenditure at Rs.5,84,706/- and disallowed the same. Before the Commissioner of Income Tax (Appeals), the assessee submitted that the assessee had borrowed funds for the purposes of vehicle and old loan of Rs.2005/- for Captive Power Plant, and therefore no borrowed funds were used for non-business purposes. Further, the assessee relied upon the decision of the Hon’ble Supreme Court in the case of S A Builders (supra) and Munjal Sales Corporation (supra) and the decision of Hon’ble Mumbai High Court in the case of Reliance Utility & Power Ltd. (supra) where it was held that if the interest free funds of the assessee were sufficient for making investments, no disallowance of interest expenditure was called for. The Commissioner of Income Tax (Appeals) held that the finding of the Assessing Officer was not correct that the assessee has not charged any interest free loan to associate concerns. He held that the assessee in fact earned interest income at the rate varying from 9% to 12.5% from the associated concerns depending upon the availability of surplus funds and thereby earned interest income of approximately Rs.50.74 lakhs during the year. He, therefore, held that disallowance made by the Assessing Officer u/s.36(i)(iii) was of Rs.40,10,861/- was not justified.

7. The Departmental Representative has merely relied upon the order of the Assessing Officer. He has not pointed out any specific error in the order of the Commissioner of Income Tax (Appeals). He could not bring any material on record to show that the assessee could not have advanced interest free loans or loans at lower rate of interest to the sister concerns out of its interest free funds available with it. Therefore, we find no infirmity in the order of the Commissioner of Income Tax (Appeals) which is confirmed and the ground no.1 of appeal of the Revenue is dismissed.

8. Further, the Assessing Officer also made disallowance of Rs.8,22,228/- out of administrative expenses, but had restricted the disallowance made to Rs.6,22,228/- as the assessee himself had made disallowance of Rs.2,00,000/- as expenses incurred for earning tax free divided income. The Commissioner of Income Tax (Appeals) observed that the said expenses must have been incurred by the assessee in making the investments and therefore confirmed the disallowance of

Rs.6,22,228/- made by the Assessing Officer. The Authorized Representative of the assessee submitted that the assessee has earned divided income of Rs.12,200/- as will be evidenced from the statement of accounts of the assessee at page 26 of the paper book for which disallowance of Rs.6,22,228/- cannot be made.

9. *We find that the Assessing Officer as well as the Commissioner of Income Tax (Appeals) could not pinpoint any error in the computation of disallowance made by the assessee of Rs.2,00,000/- in earning tax free divided income. In the circumstances, in our considered opinion, disallowance of Rs.6,22,228/- could not have been made by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals). Our above view finds support from the decision of the Hon'ble Delhi High Court in the case of CIT vs. Consolidated Photo & Finvest Ltd. (2012) 211 Taxman 184 (Del.). Therefore, we set aside the orders of lower authorities and delete the disallowance of Rs.6,22,228/-. Thus, ground no.1 of appeal of the assessee is allowed."*

We are in complete agreement with the view taken by the learned Tribunal and the reasons given by the learned Tribunal while deleting the disallowance of interest expenses under Section 14A of the Act.

[5.2] Now, so far as the contention on behalf of the appellant with respect to applicability of Rule 8D of the Rules with effect from 31.03.2006 is concerned, there cannot be any dispute about the same. However, it is required to be noted that the AO made the disallowance under Section 14A of the Act solely on the ground that the assessee failed to justify that the investment was made out of the interest free funds. However, both the learned CIT(A) as well as the learned Tribunal have found otherwise. Under the circumstances, the decision of the Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. (Supra) which has been relied upon by the learned Counsel appearing on behalf of the Revenue would not be of any assistance to the facts of the case on hand.

Therefore, we confirm the impugned judgment and order passed by the learned Tribunal insofar as deleting the disallowance of interest expenses under Section 14A of the Act in its entirety.

[5.3] Now, so far as the second proposed question of law raised in Tax Appeal No.277/2015 arising out of the judgment and order passed by the learned Tribunal in ITA No.781/Ahd/2013 i.e. deleting the disallowance under Section 40(a)(ia) of the Act for non-deduction of TDS on overseas freight is concerned, it is required to be noted that as per section 172 of the Act, payment made to the non-resident shipping company would not be covered in Sections 194C or 194 of the Act. At this stage it is required to be noted that it is not in dispute that the amount in question was infact paid to the non-resident shipping company. Under the circumstances, the learned Tribunal has rightly deleted the disallowance made by the AO under Section 40(a)(ia) of the Act.

[6.0] In view of the above and for the reasons stated above, we find that there is no error committed by the learned Income Tax Appellate Tribunal, 'B' Bench, Ahmedabad while passing the impugned judgment and order. No substantial question of law arise in the present Tax Appeals. Under the circumstances, both these Tax Appeals deserve to be dismissed and are, accordingly, dismissed.

THE HIGH COURT
OF GUJARAT

Sd/-
(M.R. SHAH, J.)

Sd/-
(S.H. VORA, J.)

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