

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

सर्वश्री महावीर प्रसाद, न्यायिक सदस्य एवं मनीष बोरड, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI, MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 3139/Ahd/2015

(निर्धारण वर्ष / Assessment Year:2012-13)

DCIT, Circle – 1(1)(1), Ahmedabad.	बनाम/ Vs.	M/s. Asman Investments Ltd., Arvind Mill Premises, Naroda Road, Ahmedabad – 380 025
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA 5968 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Mudit Nagpal, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. M. Mehta, A.R.

सुनवाई की तारीख / Date of Hearing	20/02/2018
घोषणा की तारीख /Date of Pronouncement	04/04/2018

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the revenue against the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad, vide Appeal No.CIT(A)-3/Cir.1(1)(2)/285/14-15 dated 03/09/2015 for the Assessment Year (AY) 2012-13.

2. The substantive grievance of the Revenue reads as under:-

“That the ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.36,99,631/- u/s.14A of the Act.”

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3. The brief facts of the case are that on verification of the balance sheet, it is seen that the assessee company had made investment in shares, the income from which is exempt from tax. Further, as per the P&L A/c the assessee has claimed interest payment to the loans and incurred other expenses. However, the assessee has not deducted such interest payment/expenses relating to the investment in shares for earning interest. Therefore, expenditure relatable to investment in shares and securities is required to be disallowed U/s. 14A of the Act. r. w. Rule 8D of the Income Tax Rules 1962. As such, vide point No. 4 of notice u/s.142(1) dated 07/01/2015, the assessee was requested to furnish working of disallowance u/s.14A of the Act and also show cause as to why disallowance u/s.14A of the Act should not be worked out invoking Rule 8D of I. T. Rules, 1962.

The assessee vide letter dated 29/01/2015 submitted as under:

1. Disallowance u/s.14A (Sr. No.1) and Point no 5 of Questionnaire dated 20.09.2013]

1.1 **Vide Point No.1**, your good selves have asked to explain as to why the expenditure incurred for earning this exempt income should not be disallowed u/s 14A r.w. Rule 8D in view of the fact that the assessee has earned exempt income of Rs.42,510/-. In this regards, the assessee company submits as under:

1.2 The break-up of investments held as on the last date of year under consideration for your immediate perusal is as under:-

Particulars	As on 31.03. 2011	As on 31.03.2010
<u>Trade Investments</u>		

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Shares of Amot Decalite ltd		577500
<u>Other Investments</u>		
Shares of Rajesh Maleables Ltd		51300
Pinnacle Shares Registry Pvt Ltd		24000
Amazon Textile Pvt Ltd		38639200
National Saving Certificates	15000	15000
<u>Investments In Subsidiary Companies</u>		
Arvind Products Limited		1281734310
Total	15000	1,321,041,310

As can be noticed in the table presented above, the investments are made in the group companies and subsidiary companies. These are strategic investments made in the group companies and they do not require constant monitoring and so no efforts of employees are diverted towards monitoring these investments. **The assessee company states that there is no increase in investments during the year under consideration.**

- 1.3 As far as **interest expenditure** is concerned, the assessee company submits that the interest cost amounting to Rs.3,46,973/- pertains to interest paid on loan taken from HDFC bank. The said expenditure is of revenue nature as per the generally accepted accounting principles. However, in order to avoid litigation, the said expense has been disallowed while computing the business income at the time of filing the return of income. So, it is

submitted that no interest expenditure remains which can be disallowed as per the provisions of section 14A r.w. Rule 8D.

- 1.4 Further, with regards to the **administrative expenditure**, it is important to note that there is no increase in investments during the year under consideration and so no cost relating to purchase such as brokerage, commission, expenses attributed to the time and efforts put in by the management in reshuffling the investment portfolio of the assessee company is paid by the assessee company. So there is no portion of administrative expense and employees cost which is attributable to earning of exempt income.
- 1.5 The assessee company further states that it is engaged in the business of trading in shares and securities and trading in clothes and garments under franchisee arrangement. The trading in clothes and garments consists of substantial portion of business activity carried on in the assessment year under consideration. The same can be evidenced from the quantum of purchases of clothes and garments made by the assessee company and the quantum of sales and other income generated by such trading activity. The income generated from such trading activity is duly offered as taxable business income and so all expenses which is attributable to earning of such taxable business income should be allowable as business expense.
- 1.6 The assessee company further submits the breakup of the expenses in the table presented hereunder wherein the expenses have been bifurcated into those which are directly and specifically related to the trading of clothes and garments and into those which are general business expense which are to be incurred for routine activities of any organization along with the remarks in regards to the treatment of these expenses in the Computation of taxable business income-

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Particulars	Amount (Debited to P/L) 31-03- 11	General Routine Business Expenses	Remarks
Employees Emoluments	43,77,566		Directly related to trading of Clothes and Garments & the retail stores.
Audit Fees - Asman	71,695	71,695	General Business Expenses
Advertisement Expense	48,120		Directly related to trading of Clothes and Garments & the retail stores.
Bank Charges - Asman	94,539	94,539	General Business Expenses
Bank Commission	2,19,039		Directly related to trading of Clothes and Garments & the retail stores.
Boni Expense	12,047		Directly related to trading of Clothes and Garments & the retail stores.
Books and Periodicals	730		Directly related to trading of Clothes and Garments & the retail stores.
Computer Exp	7,750	7750	General Repair Expense
Conveyance Expense-Asman	48,749		Directly related to trading of Clothes and Garments & the retail stores.
Electrical Expense	6,75,739		Directly related to the retail store used for trading of Clothes and Garments
Entertainment Exp	72,814		Directly related to trading of Clothes and Garments & the retail stores.
Filing Fees	5,270	5,270	General Business

			Expenses
Gift Expense	1,02,055		Gift
Insurance Premium Asman	35,143		Directly related to trading of Clothes and Garments & the retail stores.
ITAT Fees	14,875		Tax Appeal Related Expenses
Legal Fees	6,618	6,618	General Business Expenses
Kasar	1,237		Directly related to trading of Clothes and Garments
Miscellaneous Expense	1,02,425	1,02,425	General Business Expenses
Miscellaneous Balance Written off	6,30,144		Net Balance written off. Directly related to trading of Clothes and Garments.
Municipal Tax	83,650	83,650	Paid in relation to business property
Office Expense	41,429	41,429	General Business Expenses
Pledge & Custodian Charges	10,531		The shares are pledged against loan borrowed-disallowed in ROI
Postage & Courier Expenses	9,331	9,331	General Business Expenses
Print & Stationery Asman	1,16,243	1,16,243	General Business Expenses
Professional Fees -Asman	1,00,677	1,00,677	General Business Expenses
	7,70,088	7,70,088	Rent Paid For business

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Rent Expense			premises
Rent Expense - Delhi Property	9,31,200		Disallowed in ROI
Repairing Expense	37,987		Directly related to trading of Clothes and Garments & the retail stores.
Repairs Air Con	73 559		Directly related to trading of Clothes and Garments & the retail stores.
Repairs to Building	7,67,021		Directly related to trading of Clothes and Garments & the retail stores.
Security Charges	3,03,193		Directly related to trading of Clothes and Garments & the retail stores.
Service & Maintenance Exp	29,700	29,700	General Business Expenses
Signboard Exp	1,386		Directly related to trading of Clothes and Garments & the retail stores.
Stamp and Notary Charges	3,930		Directly related to trading of Clothes and Garments & the retail stores.
Telephone Expense-Asman	23,646	23,646	General Business Expenses
Travelling Expense-Asman	26,340		Directly related to trading of Clothes and Garments
Vehicle Expense - Fuel car	7,407		Expenses in relation to vehicles used for carrying the business activity of trading of clothes and garments specifically.
Vehicle Expesne - Fuel (Scooter)	26,630		

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Vehicle Expense -Repairs	11,135		
Vehicle Expense -Repairs Car	7,605		
Xerox Charges	45,131	45,131	General Business Expenses
<u>Sales Rated</u> <u>Exoesiss</u>			
Labour Exps	5,75,713		General Business Expenses and directly related to trading of clothes and garments
Transport Exps	65,276		Transport of goods (Clothes & Garments)
Packing Exps	5,87,578		Packing of Clothes And Garments
Total	1,11,82,941	15,08,192	

- 1.7 It is evident from the above table that administrative expenses to the extent of Rs.15,08,192/- are general in nature which are necessary for any organization to carry on its business operations. Out of the remaining expenditure, Rs.931,200/- has been treated separately while computing the business income and therefore the same has been disallowed while computing the business income. Pledge & Custodian Charges amounting to Rs.10,531/- have been disallowed while computing the business income as the same relates to the expense in relation to shares pledged against loan borrowed. The remaining balance of Rs.87,33,018/- are having

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direct correlation with the business of trading of clothes and garments of the assessee company. It shall be noted that the remaining expenses are incurred exclusively and specifically for carrying the business of trading of clothes and garments.

1.8 On consideration of the breakup of the above general business expense, it is evident that these expenses are general in nature and has no relation with the investment activity of the assessee company. These general business expenses had to be incurred even if there were no investments made by the assessee company. The quantum and nature of general business expenses remain unchanged and unaffected by the investment activity of the assessee company and so no portion of general administration charges is attributable to the investment activity of the assessee company and so has no relation with the exempt income of the assessee company. Hence, no portion of administrative expenses is attributable to the earning of exempt income and so any disallowance made under the provisions of Section 14A of the Act is not justified.

1.9 **Without prejudice to above**, as regard the administrative expenditure, it is stated that the assessee company has average investment of Rs.66,05,28,155/-. Therefore, by applying rule 8D the said disallowance would work out to Rs.33,02,640/- being 0.5% of the average investment.

However, the total administrative expenditure is Rs.1,11,82,941/-. Out of this, expenditure of Rs.9,31,200/- has been treated separately while computing the business income and therefore the same has been disallowed while computing the business income. Pledge & Custodian Charges amounting to Rs.10,531/- have been disallowed while computing the business income as the same relates to the expense in relation to shares pledged against loan borrowed. As explained above, the expenses of Rs.87,33,018/- are having direct correlation with the business of trading of clothes and garments of the assessee company. Thus, out of total expenses debited to profit accounts, the **general administrative expenses claimed are only to the tune of Rs.15,08,192/- which are**

necessary for any organization to carry on its business operations. The disallowance, as stated above being 0.5% of average investments, if made will exceed the total amount of general administrative expenses claimed; however, the disallowance u/s.14A r.w.r 8D cannot exceed the total amount of general administrative expenditure."

The submission made by the assessee has been carefully considered but the same is not found to be correct. Section 14A of the Act only provides that if the expenditure is incurred by the assessee in relation to income which does not form part of the total income. There is no denying the fact that the assessee has made investment in shares and securities income from which is exempt from tax. Equally, it is also a fact that the assessee has taken unsecured loan and on which it is paying sum of money as interest. The motive of the assessee in investing in shares and securities is amply clear that it should earn dividend income which is exempt from tax. The assessee also failed to substantiate with evidence for its claim that it has not incurred any expenditure in the investment activity. As stated above, the assessee has made investment in shares and securities only for the, purpose of earning dividend. In view of the above, the provisions of section 14A r.w.r. 8D is clearly applicable in the assessee's case. Accordingly, disallowance u/s.14A r.w.r. 8D is worked as under:

(i)	The amount of expenditure directly relating to income which does not form part of total income:								0
(ii)	In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely – $A \times B/C$ – Where								
	(A)	amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;						415112	388867
	(B)	the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year;							
		P.Y. Invest.	1321041310	C.Y. Invest.	3264110	Total	1324305420	2	662152710
						PY+CY			

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	(C)	the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;							
		P.Y. Assets	1370736239	C.Y. Assets	42947255	Total	1413683494	2	706841747
						PY+CY			
	(ii)	(A)		(B)		(C)		AxB/C	
	Result	Interest Exp.(A)	415112	Avg. Invest. (B)	662152710	Avg. Assets (C)	706841747	Total – AxB/C	388867
	(iii)	An amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the 'total income, as appearing in the balance sheet of the assessee, on the first day of the previous year.							3310764
		Avg. Investment		662152710		0.5	100	3310764	3310764
AGGREGATE OF (i) + (ii) + (iii)									3699631

Accordingly, an amount of Rs.36,99,631/- is disallowed and added to the total income

4. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) who partly allowed the appeal of the assessee.

5. Now revenue's appeal is before us.

6. We have gone through the relevant record and impugned order. On being called upon to explain as to why disallowance should not be made under section 14A read with rule 8D, the Appellant addressed its letter dated 29th January, 2015 elaborately explaining as to why, in the peculiar facts and circumstances of its case, there was no warrant or justification for making any disallowance under section 14A. Same was submitted to the lower authorities.

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7. Assessee contended since it had not earned any tax free income this year, there is no question for making any disallowance under section 14A. The assessee was holding long term investments of Rs.32.64 crores as at the beginning of the year and of Rs.32.64 lacs as at the end of the year; that except for a miniscule investment of Rs.15,000/- in unquoted Government securities, all the investments as at the beginning of the year were strategic investments in Appellant's subsidiary companies; that all these investments came to be transferred to Arvind Limited with effect from 1st January, 2011 upon the Hon'ble Gujarat High Court passing an order dated 29/11/2011 approving demerger of the Appellant's Investments Division which thereupon stood transferred to Arvind Limited.

8. All the investments as at the end of the year viz. Rs.32.64 lacs had been made by the revenue this year from its own funds in its subsidiary companies only; that thus, these investments too were strategic investments.

9. Assessee was engaged in the business of trading of cloth and readymade garments; that its entire turnover of Rs.94.85 crore came from this business; that on the other hand, as explained before, the Appellant's investments were confined to strategic investments in its subsidiaries only.

10. In support of its contention ld. AR cited an order of Co-ordinate Bench in ITA No.1950/Ahd/2012 in matter of Amjay Medi.Max (India) Pvt. Ltd. vs. DCIT, in this case it was held:

“Disallowance u/s 14A - Held that:- The issue in dispute is squarely covered in favour of the assessee by the decision of the Hon'ble High Court rendered in the case of Correctech Energy [2014 (3) TMI 856 - GUJARAT HIGH COURT] as observed that if no tax free income was earned by the assessee, then no expenses can be construed as incurred by the assessee, because plain reading of section 14A provides that if an assessee incurred expenditure in relation to earning of tax free income then such expenditure would not be allowed. The assessee did not earn tax free income, then where is the question of allocating expenditure. CIT(A) is not justified in confirming the disallowance. - Decided in favour of assessee.

Nature of expenditure - revenue v/s capital expenditure - Non-deduction of TDS - Held that:- With the assistance of the ld. representatives, we have gone through the record. He disallowed claim of the assessee on account of non-deduction of TDS. Thus, the ld.CIT(A) has changed the colour of the dispute. The ld.CIT(A) thereafter did not confront the assessee as to why this expenditure should not be treated as capital expenditure. Similarly, the ld.CIT(A) himself has also not tallied with items purchased by the assessee whether these electrical fittings were meant for repairing work or they are related to some new products/Items, Considering this aspect, we vacate the findings of the ld.CIT(A), The expenditure cannot be disallowed to the assessee, because it was not required to deduct TDS on the purchases. In case the AO has granted depreciation, then, he will withdraw depreciation and allow the expenditure as revenue expenditure. Thus, this ground of appeal is allowed in favour of assessee.”

11. In our considered opinion, assessee has not earned any tax free income and therefore, no expenses can be construed as incurred by the assessee and respectfully following the order of co-ordinate bench, we

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dismiss appeal of the department and in our opinion ld. CIT(A) has passed detailed and reasoned order.

12. In the result, appeal filed by the department is dismissed.

This Order pronounced in Open Court on	04/04/2018
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Sd/-
मनीष बोरड
(लेखा सदस्य)
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 04/04/2018

Priti Yadav, 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)-3, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad