

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD – BENCH ‘SMC’

[Conducted Through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 1121/Ahd/2015

निर्धारण वर्ष/Assessment Year: 2011-12

Ardor-In-Fin P Ltd Ardor House, Mondeal Business Park B/s.Gurudwara Thalej, S.G. Road Ahmedabad 380 059. PAN : AAGCA 2925 B	Vs	ITO, Ward-7(3) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Ankit Talsania
Revenue by :	Shri Lalit P.Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/05/2020

घोषणा की तारीख /Date of Pronouncement : 2705/2020

ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-6, Ahmedabad dated 23.2.2015 passed for the Asstt.Year 2011-12.

2. Originally the assessee took three grounds of appeal, wherein it has challenged confirmation of disallowance of Rs.2,97,347/- made by the AO under section 14A of the Income Tax Act, 1961 r.w rule 8D(2)(iii) of the Income Tax Rules. However, during the pendency of the appeal the assessee has raised additional grounds of appeal whereby it has pleaded that the assessee has made disallowance of Rs.59,55,723/- under section 14A *suo motto*. Since there is no tax free income in the hands of

the assessee, and therefore, in view of decision of Hon'ble Gujarat High Court in the case of Corrtect Energy P.Ltd. dated 24.3.2014 no disallowance deserves o be made. This plea was raised by the assessee in the original grounds of appeal also, and he made reference to this decision of Hon'ble Gujarat High Court.

3. With the assistance of the ld.representatives, I have gone through the record carefully. It emerges out from the record that the assessee has filed its return of income on 30.9.2011 declaring total income at Rs.13,28,278/-. This return was filed electronically. The case of the assessee was selected for scrutiny assessment, and notice under section 143(2) was issued and served upon the assessee. The ld.AO observed that as per rule 8D(2) the assessee was required to disallow 0.5% of the average value of the investment on account of administrative expenses. He found that the assessee has not calculated the disallowance under section 14A with help of this formula, rather under the head administrative expenses, it has disallowed a sum of 6,275/-. Thus, the AO took note of the investment and applied formula. He worked out a disallowance at Rs.2,97,347/-. Dissatisfied with the disallowance the assessee carried the matter in appeal before the first appellate authority. But the ld.CIT(A) concurred with the AO and confirmed the disallowance.

4. Before me, it was contended by the ld.counsel for the assessee that in the computation, the assessee has *suo motto* disallowed a sum of Rs.59,55,723/- towards interest expenses plus administrative expenses. The assessee was not having any exempt income, and therefore, no expenditure was required to be disallowed by the assessee. He made

reference to the decision of Hon'ble Gujarat High Court in the case of Corrttech Energy P.Ltd. (supra). He further submitted that Hon'ble Supreme Court in the case of National Thermal Power, 229 ITR 383 (SC) has propounded that if any issue is going to affect the ultimate taxability of the assessee, then the assessee is entitled to rake up this issue at any stage of the proceedings. He further relied upon the order of the ITAT in the case of DCIT Vs. Greeland Infracon P. Ltd. ITA No.2039 & 2040/Ahd/2016. He pointed out that in this decision, an identical situation was considered by the Tribunal. The assessee has *suo motto* disallowed certain expenditure under section 14A, however, no expenditure were to be disallowed. The department took the stand that if this expenditure is being allowed to the assessee, then the income will be reduced in negative i.e. it will come done from the income which has been admitted by the assessee in its return of income. The assessee has not filed any revised return, and therefore, it is not entitled for this relief. The CIT(A) in the case of Greeland Infracon (supra) has allowed this plea of the assessee. The matter travelled to the Tribunal, and the Tribunal has upheld the order of the CIT(A). Shri Talsania informed me that Tax Appeal bearing no.239 of 2019 was filed before the Hon'ble Gujarat High Court against this order of the Tribunal, and same stood dismissed on 9.7.2019. On the strength of this decision, he pleaded that additional grounds of appeal raised by the assessee be allowed; disallowance made by the AO on account of administrative expenses as well as disallowance worked out by the assessee *suo motto* for the purpose of section 14A be deleted, and the AO be directed to re-compute the income of the assessee.

5. On the other hand, the ld.DR was unable to controvert the contention of the ld.counsel for the assessee.

6. At this stage, I deem it appropriate to take note of the discussion made by the Tribunal in the case of Greeland Infracon(supra) because the issue is verbatim same. The finding of the Tribunal in the case of Greeland Infracon (supra) reads as under:

“6. We have carefully considered the rival submissions and perused the orders of the authorities below. The substantive question arises in the Revenue's appeal is to ascertain the correctness of the action of the CIT(A) in refusing to endorse the action of the AO for resorting to disallowance under s.14A of the Act. Two broad issues emerges in the context of the case; (i) whether the disallowance under s.14A is maintainable where admittedly no exempt income i.e. dividend was earned by the assessee in the relevant assessment year and (ii) whether the CIT(A) was justified in going beyond the return of income and remove the disallowance which the assessee itself has made while filing the return of income. In other words, whether the action of the CIT(A) in bringing down the income returned by the assessee and granting relief on the issues not raised at the time of filing original return of income or by way of revised return at a subsequent stage is justified in law or not.

7. The first issue framed above appears quite simple as we see. While adjudicating the issue, we take note of CBDT Circular No. 5/2014 dated 11/02/2014 which seeks to emphasize that all expenses pertaining to an exempt income is required to be disallowed notwithstanding the fact that no corresponding tax free income has been earned during the financial year. Notwithstanding the aforesaid circular, various Courts have held that Section 14A of the Act disallowance cannot be kicked when there was no exempt income earned by the assessee as is the case in the present appeals. Hon'ble Delhi High Court in PCIT vs IL&FS Energy Development Company Ltd. (2017) 84 Taxman.com 186(Delhi) and the Hon'ble Madras High Court in CIT v. Chettinad Logistics (P.) Limited (2017) 80 taxmann.com 221(Madras) have expressed a clear disagreement with CBDT Circular and held that where there is no exempt income in relevant year there cannot be a disallowance of expenditure under s.14A of the Act. Similar proposition has been laid down by the Hon'ble Gujarat High Court in the case of Corrttech Energy

(P.) Ltd (2014) 45 taxmann.com. 116 (Guj) and Pr.CIT vs. India Gelatine and Chemicals Ltd. (2016) 66 taxmann.com 356 (Guj). The aforesaid judicial fiat was reiterated by the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs. CIT reported in 372 ITR 692 (Delhi) wherein Hon'ble Delhi High Court has categorically ruled that disallowance under s.14A of the Act cannot exceed the amount of tax exempt income. Notably, the SLP filed against the decision of Hon'ble Madras High Court in Chettinad Logistics (supra) has been dismissed by Hon'ble Supreme Court in CIT vs. Chettinad Logistics (P.) Ltd. (2018) 95 taxmann.com 250 (SC). Hence, in conformity with the judicial precedents, we find substantial merit in the conclusion drawn by the CIT(A) which essentially holds that Section 14A of the Act can be triggered only if assessee seeks to square off expenditure against the income which does not form part of total income under the Act and Section 14A of the Act cannot be invoked where no exempt income was earned in the relevant assessment years. In consonance with the judicial precedents, we do not see any infirmity in the conclusion drawn by the CIT(A) for non-applicability of Section 14A of the Act in the facts of the case.

8. We shall now turn to the second issue raised on behalf of the Revenue regarding propriety of the action of the CIT(A) in granting relief on the disallowance (suo moto made by the assessee) beyond the return of income and in the absence of any formal revised return. The CIT(A) has discussed this aspect in very great detail in para 2.5 to 2.28 of its order. We are not inclined to reiterate the findings of the CIT(A). However, we fully endorse the observations of the CIT(A) which essentially holds that the mistake or inadvertence on the part of the assessee whereby an income not taxable has been wrongly offered for tax, will not operate as any kind of estoppel against the assessee and regardless of whether the revised return was filed or not. Once the assessee is in a position to show that it has been over assessed under the provisions of the Act even on account of assessee's own mistake or otherwise, the Revenue is under duty to assess correct income.

9. It is trite that the authorities under the Act are under sacrosanct obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, mis-conception or not being properly instructed, is over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This is the view which flows from innumerable judgments including CIT vs. Shelly Products (2003) 261 ITR 367 (SC), S. R. Koshti vs.

CIT (2005) 276 ITR 165 (Guj), Ester Industries vs. CIT (2009) 185 TAXMAN 266 (Delhi) and CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom). The essence of these decisions are that mere admission on the part of the assessee with respect to an addition/disallowance in its original return or in revised return would not ipso facto bar an assessee from claiming an expense or disputing an addition if it is otherwise permissible under law. It is thus well settled that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Revenue authorities cannot enforce untenable actions of the assessee against it which led to declaration of income of higher amount incorrectly. It is thus open to assessee to show that it was over assessed in correctly owing to its own mistake.

10. So viewed, we do not see any potency in the argument laid on behalf of the Revenue that the CIT(A) allegedly committed error in granting total relief in the matter of disallowance under s.14A of the Act. In our considered view, the action of the CIT(A) in granting relief under s.14A of the Act on account suo moto disallowance by the assessee and thereby granting relief higher than claimed in the return of income cannot be faulted in law."

7. This order has been upheld by the Hon'ble High Court. It is pertinent to note that on the issue, whether *suo motto* disallowance made by the assessee, could be excluded from the taxable income offered by itself, by the appellate authority, on the basis of position of law changed, on account of subsequent decision of the Hon'ble High Court ? It is true that return was filed by the assessee on 30.9.2011. At that point of time decision of Hon'ble Gujarat High Court in the case of Corrtect Energy P.Ltd. was not in picture. It was delivered on 24.3.2014. Therefore, on the basis of position of law, the assessee might have worked out the expenses which were required to be disallowed under section 14A in spite of non-availability of tax free income. The question is, whether the assessee can be permitted to take a plea that his self-admission in the return of income be allowed to be withdrawn on the basis of subsequent

decision of Hon'ble jurisdictional High Court, and his income is to be re-computed ? With regard to the above proposition, the ITAT in the case of Greenland Infracon (supra) has already taken note of the decision of Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT, 276 ITR 165 as well as CIT Vs. Shelly Products, 261 ITR 367 (SC). The Tribunal has further made reference to the decision of Hon'ble Delhi High Court as well as Hon'ble Bombay High Court in the finding extracted (supra). Apart from the above, I am of the view that a court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. When a court interprets a provision, it decides as to what is the meaning and effect of the words used by the Legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the Legislature had said at the time of the promulgation of the law. The declaration is - This was the law. This is the law. This is how the provision shall be construed. In the decision of Corrtch Energy (supra) the Hon'ble Gujarat High court has construed section 14A that in case there is no exempt income to an assessee, then no expenses can be worked out hypothetically for the purpose of disallowance under section 14A. This decision has come after filing of the return by the assessee. But this decision made it clear - what is position of law prevalent at the time of filing of the return, and how the assessee has committed an error which ought to have been looked into by the AO while passing the assessment order or by the CIT(A) while deciding the appeal in the year 2015, when this decision came in. The ITAT in the case of Greenland Infracon (supra) has also made reference to a large number of decisions as well as Board circular pointing out that

it is the duty of the Revenue to guide the assessee for computing true income. If something has been offered by an assessee patently under some misconstruction of law, then the revenue cannot be permitted to plead that since the assessee has offered as its income, therefore, it has to be taxed. Therefore, respectfully following order of the ITAT, Division Bench, which is based on large number of decisions including that of Hon'ble jurisdictional High Court in the case of S.R. Koshti (supra), I allow the additional ground of appeal as well as original ground raised by the assessee. In other words, since there is no tax free income, there could not be any disallowance under section 14A of the Act. I direct the AO to re-compute the income of the assessee after excluding the *suo motto* amount disallowed by the assessee of Rs.59,55,723/-. Apart from the above disallowance made by the AO on account of administrative expenses of Rs.2,97,347/- is concerned, this also stands deleted. Both amounts be excluded from the computation of income, and thereafter income of the assessee be duly determined. Appeal of the assessee is allowed.

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

Pronounced in the Open Court on 27th May, 2020.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated, 27/05/2020