

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT  
(Virtual Court Hearing)**

**BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND  
Dr. Arjun Lal Saini (ACCOUNTANT MEMBER)**

**ITA No. 504/SRT/2018  
Assessment Year: 2013-14**

Pragati Glass Private Limited,  
Kharach, Kosamba (R.S), District  
Bharuch-394120

Vs. Asst. Commissioner of Income Tax,  
Cir. 1,  
Station Road,  
Bharuch-392001.

**PAN NO. AABCP 7377 H**  
**Appellant**

**Respondent**

Assessee by	:	Mr. Surandra Modiani, AR
Revenue by	:	Ms. Anupama Singla, Sr. DR
	:	
Date of Hearing	:	01/07/2021
Date of pronouncement	:	02/07/2021

**ORDER**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the orders of ld. Commissioner of Income tax (Appeals)-3, Vadodara, dated 31.05.2018, which in turn arise from the assessment completed under section 143(3) dated 28.12.2016 for assessment year (AY) 2013-14.
2. The grounds of appeal filed by the assessee read as under:
  1. *The order of the Ld. CIT(A) is against law and facts.*
  2. *The Ld. CIT(A) erred in confirming disallowance of Rs.13,02,518/- on account of delay in depositing provident fund contribution of employees.*

*Your appellant submits that the disallowance is not justified and prays that the same be deleted.*

3. *The Ld. CIT(A) erred in confirming disallowance of Rs.4,44,263/- under section 14A of the Act.*

*Your appellant submits that the disallowance is not justified and prays that the same be deleted.*

4. *The Ld. CIT(A) erred in confirming part disallowance of various expenses to the extent of 10% such disallowance amounting to Rs.1,44,961/-.*

*Your appellant submits that the disallowance is not justified and prays that the same be deleted*

3. The brief facts of the case are that the assessee is a private limited company, engaged in the business of manufacturing of glass bottles and components. The assessee filed its return of income for assessment year 2013-14 declaring loss of Rs.3,69,41,186/-. The assessee has paid tax under Minimum Alternate Tax (MAT) under section 115JB of the Income Tax Act, 1961 on book profit of Rs.3,59,20,407/-. The case was selected for scrutiny. The Assessing Officer after issuing show cause notice and given opportunity to the assessee made disallowance under section 36(1)(va) r.w.s. 2(24)(x) of Rs.13,02,518/-, due to delay in deposit of employees contribution of provident fund. The Assessing Officer also made disallowance under section 14A by taking view that assessee has made investment of Rs.1.65 crores and claimed interest expenses of Rs.2.93 crores. The Assessing Officer issued show cause notice as to why the provision of section 14A r.w.r. 8D of the Act. The assessee has filed it

reply. In the reply, the assessee contended that the assessee has not earned any exempt income during the relevant period. The assessee has not incurred any expenses for the purpose of earning of such exempt income. The investments are made for the purpose of business. The contention of the assessee was not accepted by the Assessing Officer. The Assessing Officer after invoking the provision of Rule 8D made disallowance of Rs.4,44,263/-. The Assessing Officer further noted that assessee has debited various expenses in its profit and loss account, consisting of sale promotion, business promotion, office expenses, misc. expenses, conveyance and labour expenses. The Assessing Officer asked the assessee to furnish the bills, vouchers, payment receipts and supporting evidence. On furnishing of such details and evidences by assessee the Assessing Officer found that supporting vouchers were not proper by the assessee. The Assessing Officer for the lack of proper verification disallowed 15% of total expenses of Rs.14,49,619/- of 15% which worked out to Rs. 2,17,443/-.

4. On appeal before the CIT(A), the assessee challenged all three additions/disallowance. During first appellate stage, the ground with regard to disallowance under section 36(1)(va) was not pressed. However, on other additions/disallowances the assessee filed detailed written submission. The Ld. CIT(A) after considering the oral and

written submission of the assessee upheld the addition under section 14A. However, the disallowance of various expenses was restricted to 10%. Further aggrieved, the assessee has filed present appeal before this Tribunal.

5. We have heard the submission of Ld. authorised representative (AR) of the assessee and Ld. Departmental Representative (DR) of the Revenue and perused the order of lower authorities. Ground No. 1 in general needs no adjudication. Ground No. 2 relates to disallowance of contribution of employee provident fund of Rs. 13,02,518/- due to delay in furnishing the statement before due on dates before Provident Fund authorities. The Ld. AR of the assessee submits that during the first appellate stage, the assessee has not pressed the related ground of appeal as there was divergent views of the different High Courts. However, after certain development that recently in the Finance Act, 2021 section 36 is amended to provide that provision of section 43B (which provides for disallowance of contribution of provident fund made before due date of filing return of income) shall not apply with regard to employee contribution referred section 36. The Ld. AR accordingly prayed that from the view point harmonious consideration and the consistency of position as regards different assessees, the disallowance is not justified. The Ld. AR in alternative submission the salary of employees are

disbursed generally 7<sup>th</sup> and 10<sup>th</sup> of succeeding month. The dates of deposit of contribution are computed as 15 days from the end of the month to which the salary relates and not from the end of the month in which it is actually paid. The Co-ordinate Bench of this Tribunal in Shri Sandeep Subhash Nanavati v. DCIT (ITA No. 1362/AHD/2017) dated 14.02.2020 held that due date to be considered relevant for making payment of contribution has to be seen not with reference to the relevant months relatable to wages/salary but month of its actual disbursement. On the basis of aforesaid submission, the Ld. AR of the assessee prayed that the addition was not justified.

6. On the other hand, the Ld. DR for the revenue submits that before CIT(A), the assessee has not pressed this ground of appeal, therefore, he cannot raised this plea as the ground of appeal was not adjudicated by first appellate authority on merit. In alternative submission, the Ld. DR for the Revenue submits that in case this Bench is of the opinion that this submission raised by the assessee required consideration. This ground may be restored to the Ld. CIT(A) for consideration of facts and adjudication afresh.
7. In the rejoinder submission, the Ld. AR for the assessee after hearing the submissions of the Ld. DR for revenue submits that this ground of

appeal may be restored to the file of Ld. CIT(A) and the assessee may be give liberty to raise all factual and legal submissions before Ld. CIT(A).

8. We have considered the rival contentions of both the parties, the Ld. AR of the assessee vehemently submitted that there was divergent view of different High Courts on this at the time when the appeal of the revenue was pending before Ld. CIT(A) thus the assessee has not pressed this ground of appeal. Now the Ld. A.R. for assessee submitted that legislature by Finance Act, 2021 has amended section 36. We further find that substantial right of assessee are involved as the Assessing Officer has disallowed the entire payment of employee contribution, though it was deposited before the authorities concerned. Therefore, considering the facts and circumstances of the case and the prayer made by Ld. A.R. of the assessee, we deem it appropriate to restore this grounds of appeal raised by the assessee and restore that the issue to the file of Ld. CIT(A). The assessee is given liberty to raise all factual and legal submission before Ld. CIT(A). The Ld. CIT(A). is directed to grant reasonable opportunity to the assessee before passing the order in accordance with law without being influenced by our observation. The Ld. AR of the assessee is also directed to provide complete detail and information to the Ld. CIT(A).
9. In the result, the ground No. 2 is allowed for statistical purposes.

10. Ground No. 3 relates to disallowance under section 14A. The Ld. AR of the assessee submits that during the relevant period for assessment year under consideration the assessee has not earned any exempt income. The Assessing Officer made disallowance by taking view and the assessee has made investment of Rs.1.69 crores and incurred expenses interest expenses of Rs.2.93 crores. The Ld. AR submits that reserve and surplus consisting interest free fund available with the assessee are in far excess than the investment made for earning exempt income. Therefore, no interest expenses are warranted against the assessee. The Ld. AR of the assessee further submits that since no exempt income is earned by assessee therefore, no disallowance be made. The Ld. A.R. also shown the balance sheet of assessee wherein the reserve and surplus of assessee are about reserves surplus and shareholder's funds are operating Rs.52 crores as on 31.03.2013. The Ld. A.R. submits the assessee has invested only Rs.1.65 crores only. Thus no interest disallowance is warranted against the assessee. To support his submission, the Ld. AR of the assessee relied upon the decisions :

- CIT v. Corretch Energy P. Ltd. 45 taxmann.com 116
- CIT v. Hero Cycles Limited 323 ITR 518 (P&H HC)
- CIT v. Winsome Textile Industries Ltd. 319 ITR 204
- Everest Kanto Cylinder Ltd. v. ACIT, ITA No. 7073/Mum/2012 dated 25.09.2014

- Manugraph India Pvt. Ltd. v. DCIT, ITA No. 476/Mum/2012 dated 29.03.2015
- CIT v. UTI Bank Ltd. 32 taxmann.com 370 (Gujarat High Court)
- CIT v. Reliance Utilities & Power Ltd. 313 ITR 340 (Bombay High Court)
- Gujarat Industrial Development Corporation Ltd. 37 taxmann.com 254 (Gujarat High Court)
- Amod Stamping (P.) Ltd. 45 taxmann.com 427 Gujarat High Court
- Torrent Power Ltd. 222 Taxman 367 (Gujarat High Court)
- Raghuvir Synthetics Ltd. 394 ITR 222 (Gujarat High Court)
- The DCIT v. Gujarat Mineral Development Corporation Ltd. (ITA No. 1185/Ahd/2007, 1246/Ahd/2007, 543 & 1324/Ahd/2008, 1324/Ahd/2008 Ahmedabad Bench of ITAT).

11. On the other hand, the Ld. DR for the Revenue supported the order of lower authorities.

12. We have considered the rival contentions of both the parties. We find that during the assessment, in reply to the show cause notice, the assessee specifically contended that no exempt income earned during the relevant period under consideration. Further, the assessee stated that no expenses was incurred for the purpose of earning exempt income. We find, that the Assessing Officer in instead of verifying the fact invoked provision of Rule 8D(2) and made disallowance of Rs.3,61,763/- under Rule 8D(2)(ii) and Rs.82,500/- under Rule 8D(2)(iii) thereby making total disallowance of Rs.4,44,263/-. Before Ld. CIT(A), the assessee made similar submission as made before us and contended that assessee has not earned any exempt income. The Ld.

CIT(A) confirmed the action of Assessing Officer. It is now settled positional law that if no exempt income is earned, no disallowance under section 14A can be made. The Hon'ble Supreme Court recently in PCIT v. Oil Industry Development Board [2019] 103 taxmann.com 326 (SC) while dismissing appeal of the Revenue held that in absence of any exempt income, disallowance under section 14-A of any amount was not permissible. Considering the settled position under the law the Assessing Officer is directed to delete the entire disallowance under section 14A.

13. In the result, the ground No. 3 raised by assessee is allowed.
14. Ground No. 4 relates to disallowance of various expenses to the extent of 10%. The Ld. AR of the assessee submits that the assessee incurred total expenses of Rs.14,49,649/- on account of sales and business promotion office, miscellaneous expenses, labour expense and conveyance. The expenses were incurred wholly and exclusively for the purpose of business. The Assessing Officer disallowed 15% of the expenses by taking view that all expenditure are not fully supported by bills and vouchers, therefore, not verifiable. The Ld. CIT(A) restricted the disallowance to 10%. However, the Ld. CIT(A), while restricting the disallowances to 10%, noted the Assessing Officer has not found any single instances or nor verified before making ad-hoc disallowance. The

Ld. AR prayed for relating the entire disallowances to support its contention. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in Sayaji Iron & Engg. Co. v. CIT (2002) 253 ITR 749 (Guj).

15. On the other hand, the Ld. DR for the Revenue supported the order of Ld. CIT(A). The Ld. DR submits that the Ld. CIT(A). was very reasonable in restricting the disallowance of expenses @ 10%.
16. We have considered the rival submission of both the parties and have gone through the orders of authorities below. We find that during the assessment Assessing Officer disallowed 15% of the expenses by taking view that all expenditure are not fully supported by bills and vouchers, therefore, not verifiable. The Ld. CIT(A) restricted the disallowance to 10%. We find that the Ld. CIT(A) restricted the disallowance is to 10% despite holding that the Assessing Officer has not verified the expenses. The Ld. AR of the assessee vehemently submits that assessee is a corporate entity and all expenses were incurred wholly and exclusively for the purpose of business. We find merit in the submission of Ld. A.R. of the assessee that in absence of specifying specific discrepancies, or rejecting books of accounts no ad-hoc disallowance of various expenses is permissible. We further find that the disallowance are ad-hoc and not based on any reasoning. Thus we direct the Assessing Officer to delete the entire disallowance. In the result, ground No. 4 is allowed.

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

Order announced at the time of hearing of appeal on 02/07/2021  
in the Virtual Court hearing.

Sd/-  
(DR. ARJUN LAL SAINI)  
ACCOUNTANT MEMBER

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Mumbai;

Dated: 02/07/2021

Rahul Sharma, Sr. P.S. (on tour)

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Surat**