

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

*(through web-based video conferencing platform)*

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos. 169 & 170/Ahd/2019**  
**Assessment Years : 2013-14 & 2014-15**

Unison Metal Limited, Plot No.5015, Phase IV, Ramol Char Rasta, GIDC, Vatva, Ahmedabad-382445 PAN : AAACU 2489 A	Vs	Dy. Commissioner of Income Tax, Circle-4(1)(2), Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	None	
Revenue by :	Shri R.R. Makwana, Sr DR	

सुनवाई की तारीख/Date of Hearing : 04/10/2021  
घोषणा की तारीख /Date of Pronouncement: 05/10/2021

**आदेश/O R D E R**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The present two appeals are directed at the instance of the assessee against separate orders of learned Commissioner of Income-Tax (Appeals)-8, Ahmedabad ("CIT(A)" in short) dated 03.12.2018 and 19.12.2018 passed for Assessment Years 2013-14 and 2014-15 respectively.

2. First we take up the appeal for Assessment Year 2013-14, i.e. ITA No.169/Ahd/2019.

3. It is pertinent to observe that these appeals were listed on earlier occasion, i.e. on 20<sup>th</sup> April 2021. The assessee filed a letter requesting for adjournment on that date and the hearing was accordingly adjourned to 17<sup>th</sup> June 2021. On 17<sup>th</sup> June 2021, the Bench did not function and the hearing

was adjourned to 15<sup>th</sup> July 2021 and a fresh notice was issued to the assessee. The assessee again filed an adjournment application and the hearing was adjourned to 4<sup>th</sup> October 2021. This date was duly communicated in the course of hearing and also displayed in the cause list. A fresh notice was also issued to the assessee in this regard; but, inspite of this, no one has come present before the Tribunal on behalf of the assessee; therefore, with the assistance of the learned Departmental Representative, we have gone through the record carefully and proceed to decide the appeal on merit.

4. The assessee has taken four grounds of appeal. In Ground No.1, the assessee has pleaded as under:-

*"1. That the Ld. CIT(A) has erred in passing ex-parte order observing that on the date of hearing on 11.10.2018, there was no response but for the aforesaid hearing there was telephonic call of fixing the hearing on 24.10.2018 instead of 11.10.2018 and our representative visited and confirmed the same and then on 24.10.2018, a adjournment application was sent but the ex-parte order is passed on 03.12.2018."*

5. A perusal of the order would reveal that, like in the Tribunal, the assessee has sought adjournment before the learned First Appellate Authority and did not make sufficient and sincere efforts to present its case; and, therefore, learned First Appellate Authority has to decide the appeal *ex-parte*. We do not find any error in the order of the learned CIT(A) on this point; hence, this ground of appeal is rejected.

6. In Ground Nos. 2 & 3, the assessee has pleaded as under:-

*"2. The Ld. CIT(A) has erred in upholding the disallowance of administrative expenses pertaining to investment made in partnership firm as the assessee having been taxed on interest received from such partnership firm, the provision of Section 14A is not application."*

3. That the Ld. CIT(A) has erred in upholding the disallowance of administrative expenses on investment in shares totaling to Rs.32,000/-, as the assessee having not received any dividend, in view of decision of Gujarat High Court in the case of CIT vs. Corrttech Energy Pvt Ltd and other decisions, the provision of Section 14A do not apply."

7. With the assistance of learned Departmental Representative, we have perused the assessment order. The findings of the learned Assessing Officer on this point read as under:-

"6. Disallowance u/s 14A r.w.r. 8D

6.1 The assessee was asked vide order sheet noting dated 04.02.2016 to provide for the applicability of disallowance u/s. 14A r.w.r. 8D.

6.2 The reply of the assessee in this regard vide submission dated 'Nil' is kept on record.

On perusal of the same, it is noted that assessee has not made any disallowance w.r.t rule 8D (iii). Making maintenance and disposal of investments, always entail certain administrative expenditure. Therefore disallowance u/s. 14A is required to be made in this case. Reliance in this regard is placed on following judgments:

- (1) Cheminvest Ltd. Vs. ITO, 124 TTT 577 (2009) (Del.) (SB)
- (2) Daga Capital Management Pvt Ltd., (2008) 117 ITD169 (Mum) (SB)
- (3) Rajasthan State Warehousing Corp. Ltd. V/s. CIT, 242 ITR 450 (Raj.)
- (4) Maruti Udyog Ltd. vs. Dep. Com. (Delhi), 92 TTJ 987
- (5) Wipro Information Technology Vs. Dep. CIT (Bang) 88 TTJ 378
- (6) Dep. Comm. Of I.T. Vs. Shree Synthetics Ltd. (Indore) 88 TTJ 717.
- (7) Harish K. Bhatt Vs. ITO 85TTJ 872.

In view of the above, disallowance u/s. 14A t.w.r 8D is worked out as under:-

(A) Direct expenses	-	Rs. NIL/-
(B) Disallowances out of interest	-	Rs. NIL/-
(C) Half percent of average investment	-	0.5% of 4,71,38,527/-.
	=	Rs.2,35,692/-

Disallowance u/s. 14A = A+B+C = Rs.2,35,692/-

*In view of the above an amount of Rs.2,35,692/- is added to the income of the assessee.*

*[Addition of Rs.2,35,692]"*

8. Though this aspect does not throw much light on the reasoning what weighed with the Assessing Officer while calculating the disallowance for the purpose of Section 14A; however, a perusal of his reliance upon the decision of Special Bench of the Tribunal in the case of Cheminvest Ltd vs. ITO, reported in 124 TTJ 577 (Del) (SB) as well as his findings in AY 2014-15, we find that the learned Assessing Officer was for the view that the disallowance under Section 14A of the Act is to be made by keeping in mind the reasoning that the expenditure in relation to the exempt income is required to be disallowed and not to examine whether the expenditure incurred by the assessee has resulted into exempt income or taxable income. According to him, what is relevant is to work out the expenditure in relation to the exempt income and not to examine whether the expenditure incurred by the assessee has resulted into exempt income or taxable income. Firstly the Special Bench decision of the Tribunal put into service by the Assessing Officer at serial no. 1 amongst other decisions in the findings extracted supra is concerned, this decision has been reversed by the Hon'ble Delhi High Court. Similarly, in the grounds of appeal, the assessee has pleaded that it has no exempt income; and, in view of the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Corrttech Energy Pvt Ltd, reported in 372 ITR 97, no disallowance should have been made. The investment in the shares has been pleaded by the assessee at Rs.32,000/- in this year. Though it is not verifiable from the findings of any of the authorities below, but, considering the pleadings of the assessee that it has no taxable income, we allow this ground of appeal and delete the disallowance. We are doing this because in Assessment Year 2014-15, the

assessee has exempt income of Rs.1,81,315/- whereas the Assessing Officer has worked out the disallowance at Rs.2,21,640/-, i.e. more than the exempt income. This aspect gives us guidance that the Assessing Officer has not considered the figure; he simply proceeded with the formula of Rule 8D i.e. 0.5% of the total investment. He disallowed taking a lead from there. We, therefore, find force in the ground of appeal raised by the assessee and the statement of facts made therein. Therefore, the Ground No.2 & 3 of the appeal are allowed. The disallowance made under Section 14A of the Act and confirmed by the learned CIT(A) in Assessment Year 2013-14 is thus deleted.

9. In Ground No.4, the assessee has pleaded that the learned CIT(A) has erred in confirming the disallowance of travelling expenses amounting to Rs.1,34,066/-.

10. A perusal of the impugned order would reveal that these expenditures were incurred in Assessment year 2012-13. It was crystallized in that year. Therefore, according to the Revenue Authorities, it should have been claimed in the earlier year. The assessee has pleaded that since there is a same rate of taxes; therefore, this expenditure should be allowed in this year also. We do not find any force in this contention of the assessee; because if that be so, then it will be at the sweet will of the assessee to declare the quantum of income in any assessment year. The assessee may show higher income in a particular year and lower income in another year. It has to be adhered to the accounting principles as contemplated under Section 145 of the Income-tax Act and compute the true income assessable in a particular year. The Revenue Authorities have rightly disallowed this

expenditure and no interference is called for. Accordingly, Ground No.4 is rejected.

11. Now we take up ITA No.170/Ahd/2019 for Assessment Year 2014-15.

12. As far as the date of hearing is concerned, both the appeals were listed together before the Tribunal in the past and hearing was adjourned on the request of the assessee. In spite of specific request for 4<sup>th</sup> October 2021, no one has come present before the Tribunal on behalf of the assessee. We, therefore, with the assistance of the learned Departmental Representative, proceed to decide the appeal *ex-parte* qua the assessee.

13. As far as Ground No.1 is concerned, the assessee has challenged the *ex-parte* proceedings taken by the learned First Appellate Authority. After going through the records, we do not find any error in the findings of the learned First Appellate Authority. Ground No.1 is, therefore, rejected.

14. In Ground Nos. 2 & 3, the assessee has challenged the disallowance made under Section 14A of the Income-tax Act. In this year, we find that the assessee has claimed tax-free income of Rs.1,81,315/-. The Assessing Officer has worked out the disallowance at Rs.2,21,640/- with the help of formula provided in Rule 8D. The Assessing Officer has worked out only administrative expenses @ half percentage of average investment. On due consideration of the facts and circumstances of the case, we are of the view that the disallowance in any case cannot exceed the exempt income in itself. The expenditure is to be disallowed relatable to earning of exempt income. So, it cannot be assumed that Rs.2,21,640/- could be incurred for earning tax-free income of Rs.1,81,315/-. This is an erroneous approach at the end

of the Assessing Officer - more particularly in view of the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. Corrttech Energy Pvt Ltd, reported in [2015] 372 ITR 97 (Gujarat). The assessee has disallowed Rs.2,000/- itself on administrative expenses. To our mind, that is also on the lower side looking to the average of investments considered by the Assessing Officer at Rs.4,39,28,004/-. Considering the overall facts and circumstances of the case, we restrict this disallowance to Rs.20,000/- keeping in view the meager exempt income of Rs.1,81,315/-.

15. In the next Ground of Appeal, the grievance of the assessee is that the learned CIT(A) has erred in upholding disallowance of employees contribution of provident fund of Rs.45,164/-. The assessee has contended that though this amount was paid after due date provided in the PF Act, but it was paid prior to the due date of filing of the return. This explanation did not meet the approval of Hon'ble High Court of Gujarat as reported in the case of CIT Vs. GSRTC [2014] 366 ITR 170 (Guj.) The learned First Appellate Authority has followed this decision and, to our mind, learned First Appellate Authority has not committed any error in upholding the disallowance. Accordingly, this ground of appeal of the assessee is rejected.

16. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the Court on 5<sup>th</sup> October 2021 at Ahmedabad.

Sd/-

Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

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

Ahmedabad, Dated 05/10/2021

*W*

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)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad