IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 963 of 2017

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PRINCIPAL COMMISSIONER OF INCOME TAX - 1....Appellant(s)

Versus

ADANI AGRO PVT. LTD.....Opponent(s)

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Appearance :

Mr MANISH R BHATT, Sr Advocate with Mrs MAUNA M BHATT, Advocate for the Appellant(s) No. 1

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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
5th February 2018

ORAL ORDER (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

Revenue has filed this Appeal challenging the judgment and order dated 31st May 2017, raising the following questions for our consideration :

> [A] "**Whether the Appellate Tribunal has erred in law and on facts by deleting the addition of Rs. 88,231,450/= made under Section 14A of the Act on account of expenses incurred towards the**

exempted income as per Rule 8D of the Income Tax Rules ?”

[B] “**Whether the Appellate Tribunal has erred in law and on facts in deleting the addition of Rs. 88,21,450/= being disallowance under Section 14A, while computing book profit under Section 115JB of the Income Tax Act** ?”

Though two questions are framed, the second question is sequel to the first question which relates to disallowance of Rs. 88.21 lakhs [rounded off] by the Tribunal from those made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 [“**the Act**” for short] read with Rule 8D of the Rules.

The Assessing Officer was of the opinion that the assessee had not fully disclosed the expenditure incurred for earning exempt income, and therefore, the format period under Rule 8D for making disallowance under Section 14A of the Act ought to be invoked. He accordingly disallowed certain interest expenditure as well as inflated the administrative expenditure shown by the assessee for earning such tax exempt income.

The Tribunal found that the assessee had surplus tax free funds, and therefore, there was no question of disallowance of any interest income. We are however concerned with the latter portion of the disallowance, namely, that made by the Assessing Officer towards administrative expenditure. The Tribunal noted that the entire administrative expenses of the assessee was Rs. 30 lakhs, out of which, the assessee had offered Rs. 10 lakhs *ie*., 1/3rd of the total administrative expenditure for earning income covered under Section 14A of the Act. The Assessing Officer, however, made disallowance based on the format provided under Section 8D of the Rules and found that such disallowance would be to the tune of Rs. 60 lakhs. The Tribunal was of the opinion that even after completing the format, the disallowance cannot exceed the total administrative expenditure incurred by the assessee.

We are fully in agreement with the view of the Tribunal. Under no circumstances, can the Assessing

Officer attribute administrative expenses for earning tax free income in excess of the total administrative expenditure incurred by the assessee. If it is a case where Assessing Officer disputes, question and disallow the very declaration of the assessee regarding total administrative expenditure, the issue can be somewhat different. Nevertheless, when the Assessing Officer has in the present case did not disturb the assessee's declaration that total administrative expenses incurred by the assessee for all its activities was Rs. 30 lakhs, there was no question of disallowing administrative expenses to the tune of Rs. 60 lakhs under Section 14A of the Act with the aid of Rule 8D of the Rules. Tax Appeal is, therefore, dismissed.

[AKIL KURESHI, J.]

[B.N. KARIA, J.]

Prakash