

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 14 of 2017 (O&M)
Date of decision: 20.02.2017**

The Pr. Commissioner of Income Tax (Central), Ludhiana

.....Appellant

Vs.

M/s Ganeshay Overseas Industries Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Rajesh Katoch, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 14 and 32 of 2017 as according of the learned counsel for the appellant, the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No. 14 of 2017.

2. ITA No. 14 of 2017 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 which (in short, “the Act”) against the order dated 19.10.2015, Annexure A.III, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, “the Tribunal”) in ITA No. 236/Chd/2015, for the assessment year 2010-11, claiming following substantial questions of law.

“(i) Whether on the facts and in the circumstances of the case, the Hon’ble Income Tax Appellate Tribunal, Division Bench,

Chandigarh has erred in law in deleting the entire addition of ₹ 84,00,560/- made by the AO under Section 14A of the Income Tax Act, 1961 which was confirmed by the CIT(A) to the extent of ₹ 23,16,000/- without appreciating the specific findings of the AO as well as of the CIT(A) that the assessee had not been able to substantiate its claim of not having any nexus between the interest expenditure/administrative expenses and the earning of the tax-free income, though opportunity was allowed by the AO to the assessee, in this regard?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, Division Bench, Chandigarh has erred in law in dismissing the appeal of the revenue against the decision of the CIT(A) who had restricted the addition under Section 14A of the Income Tax Act to the extent of the exempt income of ₹ 23,16,000/-whereas as per Section 14A of the Act, the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the relevant year or not and therefore the disallowance under Section 14A of the Act cannot be restricted to the extent of amount of the exempt income?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 14 of 2017 may be noticed. During the course of assessment proceedings for the assessment year in question, the Assessing Officer noticed that the assessee had made investments to the tune of ₹ 67,50,41,000/- in previous year which was shown in the balance sheet for the period ending 31.03.2010. However, the assessee had not shown any income on this amount except a dividend income of ₹ 23,16,000/- which was claimed as exempt under Section 10(34) of the Act in the computation of income. The assessee was asked by the Assessing Officer to show cause as to why disallowance of proportionate expenses as per Rule 8D of the Income

Tax Rules, 1962 (in short, “ the Rules”) be not made. The assessee did not file any reply. Thus, in accordance with the Rule 8D of the Rules, read with Section 14A of the Act, the disallowance was worked out at ₹ 84,00,560/- which was disallowed and added back to the income of the assessee under Section 14A of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 18.12.2014, Annexure, A.II, the CIT(A) restricted the disallowance of ₹ 84,00,560/- to the extent of the exempted income of ₹ 23,16,000/-. Not satisfied with the order, the assessee as well as the revenue filed cross appeals before the Tribunal. The Tribunal allowed the appeal filed by the assessee and dismissed the one filed by the revenue, deleting the entire addition made by the Assessing Officer under Section 14A of the Act, holding that the interest expenditure incurred by the assessee during the year was not having nexus to the earning of the tax-free income. Thus, no disallowance on account of interest expenditure under Section 14A of the Act could be made. Hence, the instant appeals by the revenue.

4. We have heard learned counsel for the appellant.

5. Admittedly, the assessee had made investments to the tune of ₹ 67,50,41,000/- in the previous year which was shown in the balance sheet for the period upto 31.03.2010. The assessee had not shown any income on this amount except dividend income of ₹ 23,16,000/- which was claimed as exempt under Section 10(34) of the Act. The assessee was asked by the Assessing Officer to explain the position. The Assessing Officer after examining the matter disallowed the amount of ₹ 84,00,560/- and added the same to the income of the assessee under Section 14A of the Act. The appeal filed by the assessee was partly allowed by the CIT(A) restricting the amount of disallowance to ₹ 23,16,000/- Thereafter, both the assessee as

well as the revenue filed cross appeals before the Tribunal. The Tribunal vide order dated 19.10.2015, Annexure A.III, allowed the appeal filed by the assessee and dismissed the one filed by the revenue, deleting the entire addition made by the Assessing Officer under Section 14A of the Act. The categorical finding recorded by the Tribunal is that the investment in the earlier year was of ₹ 63,30,41,000/-. At the end of the current year, the amount came to ₹ 67,50,41,000/-. Thus, the increase of ₹ 4,20,00,000/- was on account of transfer of share application money to share allotment. The investments were made in the earlier year and no new investment had been made in the current year. Thus, it was concluded that the investments made in the earlier year were made out of own funds of the assessee and no borrowed funds were used for such investments. It was further recorded that the interest paid during the year did not have any nexus to the investments and thus, no tax free income from these investments was earned. The relevant findings recorded by the Tribunal read thus:-

“7. We have heard the learned representative of both the parties, perused the findings of the authorities below and considered the material available on record. It is seen from the perusal of the balance sheet, Profit & Loss Account and the schedules annexed thereto (Paper Book Page-1) that the investment in earlier year was of ₹ 63,30,41,000/-, while it is to an amount of ₹ 67,50,41,000/- at the end of the current year, the increase of ₹ 4,20,00,000/- is on account of transfer of share application money to share allotment, as is evident from page 4 of the Paper Book. As such, it is quite evident that the investments were made in earlier year, no new investment has been made in the current year. From the perusal of Paper Book page 8, which is Annexure-20 to the Profit & Loss Account, it appears that no interest to bank or otherwise was paid in the earlier year, which goes to prove that the investments having been made in earlier year were made out of own funds of the assessee and no

borrowed funds were used for such investments. As regards interest of ₹ 66,91,327/- being paid this year, it is seen from the perusal of Annexure-3 of the balance sheet placed a Paper Book Page-3 that ICICI working capital limit amounting to ₹ 49,99,98,560/- was raised during the year, which was not there in the preceding year, which further goes to prove that the interest paid during the year does not have any nexus to the investments and thus no tax free income from these investments was earned. Therefore, any disallowance of interest expenditure being related to earning tax-free income cannot be made in this case.

8. There is no need to go further on the issue of disallowance of interest part of the expenses related to earning tax free income, as from the explanation and evidences brought on record by the assessee, as stated hereinabove, it is proved beyond doubt that the interest expenditure incurred by the assessee during the year does not have any nexus to earning of tax-free income. Relying on the judgment of the Hon'ble Jurisdictional Punjab & Haryana High Court in the case of Bright Enterprises Private Limited Vs. CIT, ITA 224 of 2013 (O&M) dated 27.07.2015, we hold that on the facts and circumstances, no disallowance on account of interest expenditure under Section 14A of the Act can be made in this case.

9. As regards the administrative expenses part of the disallowance under Section 14A of the Act, the assessee has all along been contending before the lower authorities that there was no need for it to incur any such expenditure, the Assessing Office straightaway, without commenting on such claim of the assessee, embarked upon computation under Rule 8D of the Income Tax Rules for the purpose of Section 14D of the Act. She has nowhere recorded her satisfaction that how such claim of the assessee is not acceptable to her. From the perusal of the whole order of the Assessing Officer, no such satisfaction can be inferred directly or indirectly. In such circumstances, the recording of satisfaction of the Assessing Officer is a must, as held by the Hon'ble Jurisdictional Punjab & Haryana High

Court in the case of CIT Vs. Deepak Mittal. 36CCH 51 (2013) (P&H). There are a number of other judgments of various High Courts and Benches of the Tribunal. However, for the sake of brevity, we see no need to mention all of those. Therefore, in the circumstances, no disallowance on account of expenses under Section 14A of the Act can be made.”

6. The findings have been recorded by the Tribunal after appreciating the factual position on record and the relevant provisions of law, which have not been shown to be illegal or perverse by the learned counsel for the appellant. Thus, no substantial question of law arises. Consequently, both the appeals stand dismissed

(Ajay Kumar Mittal)
Judge

February 20, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes