

**IN THE INCOME TAX APPELLATE TRIBUNAL “ D ” BENCH, AHMEDABAD
(BEFORE SHRI MUKUL KR. SHRAWAT J.M. & SHRI ANIL CHATURVEDI, A.M.)**

I.T. A. No. 2228/AHD/2012
(Assessment Year:2008-09)

The Income-tax Officer, Ward-
4(2), Ahmedabad

Vs. Karnavati Petrochem Pvt.
Ltd.,
Sambhav House, Opp.. Judges
Banglow,
Premchandnagar, Bodakdev,
Ahmedabad

(Appellant)

(Respondent)

PAN: AABCK5078Q

Appellant by : Shri T. Sankar Sr. D.R.
Respondent by : Shri S.N. Divetia A.R.

(आदेश)/ORDER

Date of hearing : 12-06-2013
Date of Pronouncement : 05-07-2013

PER SHRI ANIL CHATURVEDI,A.M.

1. This appeal is filed by the Revenue against the order of CIT(A)-VIII, Ahmedabad dated 12.07.2012 for A.Y. 2008-09
2. The facts as culled out from the order of lower authorities are as under.

3. Assessee is a company engaged in the business of Finance. It electronically filed its return of income on 25.08.2008 declaring total income at Rs. NIL after set off of carry forward losses. The case was selected for scrutiny and thereafter assessment was framed under 143(3) vide order dated 25.10.2010 and the total income was assessed at Rs. 15,45,700/-. Aggrieved by the order of Assessing Officer, Assessee carried the matter before CIT(A). CIT(A) vide order dated 12.07.2012 granted partial relief to the Assessee. Aggrieved by the aforesaid order of CIT(A) the Revenue is now in appeal before us and has raised the following effective ground:-

1. *The Ld. CIT(A) has erred in law and on facts in deleting disallowance of Rs. 15,63,883/- made u/s. 14A of the Act, without appreciating the fact that there was no nexus that could be established with the amounts incurred by the assessee for earning the tax free income.*

4. During the course of assessment proceedings, Assessing Officer noticed that Assessee has made investment in shares amounting to Rs. 95,45,400/-. Assessing Officer was of the view that the investment would generate exempt income and therefore provisions of section 14A becomes applicable. He accordingly applying the formula prescribed in Rule 8D of Income Tax Rules 1962 worked out disallowance under Section 14A of Rs. 15,63,883/-. Aggrieved by the order of Assessing Officer, Assessee carried the matter before CIT(A). CIT(A) after

considering the submissions made by the Assessee granted partial relief by holding as under:-

4.3 I have gone through the assessment order and the submission of the appellant. During the course of Assessment proceeding, the Assessing officer noticed that the appellant had made investment in shares amounting to Rs.95,45,400/- so that disallowance of expenses was required to be made in view of section 14A of the Act in respect of interest expenses and administrative expenses the AO has worked out the disallowance of Rs. 15,63,883/- as per Rule 8D. The appellant has submitted that he has claimed only Rs. 300 as exempt income i.e. Dividend Income and it is submitted that no direct/indirect expenditure has been incurred to earn the exempt income. The appellant has submitted that the dividend generally received through ECS and no specific expenditure incurred for collecting and depositing the said dividend in bank, therefore, no disallowance u/s 14A can be made for administrative expenses. The appellant has further submitted that he has incurred interest expenses of Rs.1,83,02,724/- as against interest income of Rs. 1,86,81,762/- and thus it has surplus interest income of Rs. 3,79,038/- and on that ground no part of interest can be disallowed u/ 14A read with rule 8D on the basis of the decisions of Kolkatta Bench of IT AT in case of Trade Apartment Ltd and the decision of Mumbai Tribunal in case of Morgan Stanley India Securities Private Limited. The appellant has further submitted that AO has not pointed out any particular expenditure that incurred for earning exempt income and while proposing disallowance u/s 14A, AO has failed to establish a pre-requisite nexus between the expenditure disallowed and the investments made from which income earned is exempt from tax. The appellant submits that there cannot be any presumption that the borrowings were made for the purpose of making any investment, consequently, the proposed addition by the Id. Assessing Officer is uncalled for.

4.4. On the identical facts in assessee's own case the Ld. CIT(A)VIII in Appeal no. CIT(A)-VHI/ITO Wd-4(2)/657/09-10 dated 25.01.2011

for the A.Y. 2007-08 has held in para 4.3.2 on page no. 17 as under:-

"In view of the details submissions of the appellant, it is categorically established that the interest expenditure has no direct nexus with the tax free investment. Secondly, the net interest expenditure is only Rs. 3,26,722/-. In such a situation where appellant has net interest expenditure only of Rs. 3,26,722/-, the disallowance of gross interest is not justified. The case of Hero Cycles Ltd. (P & H) 323 ITR 22 supports this contention. In view of all the facts mentioned above the disallowance u/s 14A has calculated and submitted by the appellant above of Rs. 40769/- is confirmed. The remaining addition Rs. 494132/- is deleted."

Therefore, in light of the above discussion, I am of the opinion that there was no nexus that could be established with the amounts incurred by the assessee for earning the tax free income. The appellant is also having net positive interest income which cannot be part for the disallowance in view of the basis of the decisions of Kolkatta Bench of IT AT in case of Trade Apartment Ltd and the decision of Mumbai Tribunal in case of Morgan Stanley India Securities Private Limited. At the same time, the appellant is incurring administrative expenses to maintain the above investments. In view of the above, the amount of Rs. Rs. 47940/- which is 0.5% of average Investment of Rs. 94,45,400/- is taken as the disallowance u/s 14A. In view of the facts of the case and the decision in the cases (supra) and following the decision of my predecessors, the disallowance made by the A.O. u/s 14A of the I.T. Act, 1961 cannot be fully sustained. In these circumstances, the A.O. is directed to delete the disallowance made by him of Rs. 15,08,803/- and Rs. 7140/- on amount of interest under section 14A of the Act. The disallowance of Rs. 47940/- on administrative expenses is confirmed. The ground of appellant is partly allowed.

5. Aggrieved by the order of CIT(A) the Revenue is now in appeal before us.

6. Before us, the learned D.R. relied on the order of Assessing Officer. On the other hand the learned A.R. submitted that provisions of Section 14A are applicable only when Assessee earns an income which is exempt from tax and incurs some expenditure for earning the aforesaid income. He further submitted that the Assessing Officer has to establish nexus between the expenditure incurred and the source of exempt income. In the present case, no nexus has been established by the Assessing Officer and therefore no disallowance under 14A can be made. The learned A.R. further submitted that the Assessee has received dividend of Rs. 300 which has been received through ECS and no specific expense has been incurred for collecting and depositing the dividend. He thus supported the order of CIT(A).

7. We have heard the rival submissions and perused the material on record. We find that CIT(A) while granting relief to the Assessee has given a finding that no nexus has been established by the A.O. with the amount incurred by the Assessee for earning the tax free income. He has further noted that in the Assessee's case the interest income was more than interest expense and thus the Assessee was having net positive interest income and therefore the same cannot be considered for disallowance and for which he placed reliance on the decision of Kolkata Tribunal in the case of Trading Apartment Limited and the decision of Tribunal in the case Morgan Stanley India Securities Private Limited. He however

considered the administrative expenses to be 0.5% of the average investments and disallowed the same.

8. Before us the Revenue could not bring any material on record to controvert the findings of CIT(A). We therefore find no reason to interfere the order of CIT(A). Thus this ground of the Revenue is dismissed.
9. In the result the appeal of the Revenue is dismissed.

Order pronounced in Open Court on 05 -07- 2013.

Sd/-

(MUKUL KR. SHRAWAT)
JUDICIAL MEMBER

Ahmedabad.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

TRUE COPY

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad