

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

**BEFORE SHRI RAJPAL YADAV,
HON'BLE VICE-PRESIDENT
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

**ITA.No.2822/Ahd/2016
निर्धारण वर्ष/Asstt.Year : 2011-12**

Baroda District Co-op. Milk Producers Union Ltd. Makarpura Baroda 390 010. PAN : AAAAB 4510 B	Vs	ACIT, Range-2 Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Manish J. Shah
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/01/2020
घोषणा की तारीख /Date of Pronouncement: 27/01/2020

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-5, Vadodara dated 16.8.2016 passed for the assessment year 2011-12.

2. Assessee has taken two grounds of appeal. They read as under:

1. *On the facts of the case the learned C.I.T.(A) on law as well as on facts of the case in law in confirming the disallowance deduction of Rs. 332629/- out of Rs. 607354/- in respect of sale of seeds claimed u/s 80P(2)(IV) of the I.T. Act, 1961. (607354-274725)*

On the facts of the case the learned C.I.T(A) failed to appreciate the facts that the said disallowance is uncalled and unwarranted

Your appellant therefore prays in the interest of justice to delete the above disallowance of Rs. 332629/- out of Rs. 607354/- in respect of sale of seeds claimed u/s 80P(2)(IV) of the I.T. Act, 1961.

2. On the facts of the case the learned C.I.T.(A) on law as well as on facts of the case in law in disallowing a deduction of Rs. 440120/- u/s 14A of the I.T. Act, 1961.

The learned C.I.T.(A) has wrongly invoked the provision of section 14A and Rule 8d of Income Tax Rules.

3. Brief facts of the case are that the assessee is a cooperative society registered under Gujarat State Cooperative Societies Act and engaged in the business of milk processing and production of milk products, besides sale of seeds. Assessee has filed its return of income on 26.9.2011 declaring total income at Rs.2,95,03,620/-. The case of the assessee was selected for scrutiny assessment. During the scrutiny assessment, it was noticed by the AO that the assessee has claimed deduction of Rs.6,07,354/- under section 80(P)(2)(iv) of the Act as profit on sale of seeds. From the trading OF account furnished by the assessee, it revealed to the AO that assessee has debited an amount of Rs.3,28,242/- towards opening stock, Rs.2,62,662/- towards purchases and claimed an amount of Rs.4,57,875/- as gross profit on total sale of Rs.9,95,613 of cotton seeds. The AO has also noticed that assessee has claimed deduction of Rs.6,07,354/- being profit on sale of cotton seeds, while trading account showed gross profit of Rs.4,57,875/-, therefore, the assessee has also claimed excess claim to the extent of Rs.1,49,479/-. It was submitted by the assessee that there were no expenses incurred by the assessee on account of sale, as the assessee was acting as commission agent, and the members would lift the seeds directly from the premises of the assessee. However, the AO was of the view that there could not be any income without expenses, and therefore, deduction under section 80P(2)

should be allowed on net profits after debiting expenses and not gross profit. Accordingly, the Id.AO restricted the deduction by estimating indirect expenditure at the rate of 40%, which worked out to Rs.2,74,725/- i.e. [Rs.6,07,754/- minus Rs.1,49,749/- (excess amount claimed by the assessee) minus Rs.1,83,150/- being 40% of Rs.4,57,875/- shown by the assessee as gross profit). Against this disallowance of Rs.3,32,629/- i.e. [Rs.1,49,749/- plus Rs.1,83,150/-] assessee went in appeal before the first appellate authority, but the assessee could not get any relief, hence, before us.

4. Before us the Id.counsel for the assessee reiterated submissions as were made before the lower authorities. He further submitted that similar issue has arisen in the assessment years 2013-14 and 2012-13 which went upto the Tribunal, and the Tribunal in ITA No.3283 & 3282/Ahd/2016 vide order dated 30.4.2019 gave relief. Therefore this issue is covered in favour of the assessee and the same may be applied in the present year also. On the other hand, the Id.DR supported the orders of Revenue authorities.

5. We have considered rival submissions and gone through the record carefully. Firstly, we find that assessee has claimed gross profit of Rs.6,07,354/- on sale of seeds. However, as per the trading account submitted by the assessee and examined by the Revenue authorities showed GP of Rs.4,57,875/-, therefore, the assessee has claimed excess amount to the extent of Rs.1,49,479/-. To this effect, no explanation was given by the assessee nor any details available on record. Therefore, disallowance made by the Revenue authorities to this extent is confirmed.

So far as the balance amount of Rs.1,83,150/- is concerned, we find that ITAT in the assessee's own case for the A.Ys.2013-14 and 2012-12 has given further relief at 20% on the balance amount of the disallowance. Therefore, since facts are similar in the present year also, we would take this

line of finding recorded by the Coordinate Bench, and allow similar relief to the assessee in this year also. Accordingly, we allow further relief to the extent of 20% on the balance sum of Rs.1,83,150/-, and allow this ground partly.

6. In the second ground, the assessee has challenged confirmation of disallowance of Rs.4,40,120/- under section 14A of the Income Tax Act, 1961.

7. As the facts emerge from the record, during the course of assessment proceedings, the AO noted that the assessee had earned dividend income of Rs.16,362/- which is exempt under section 10(34) of the Income Tax act. The assessee did not make any disallowance under section 14A r.w. rule 8D. It was explained by the assessee that the investments had been made out of own funds and the provisions of section 14A were not applicable to the case of the assessee. The AO did not convince with the contentions of the assessee, he calculated disallowance as per the formula given in Rule 8D and made addition of Rs.4,40,120/-. This addition was challenged before the first appellate authority, who confirmed the finding of the AO and rejected the assessee's claim. Hence, the assessee is before the Tribunal.

8. The Id.counsel for the assessee while reiterating the contentions raised before the Revenue authorities submitted that issue is covered in favour of the assessee by order of the Tribunal in the case of the assessee for the subsequent Asstt.Years 2013-14 and 2012-14, wherein similar disallowance made by the Revenue authorities was deleted, and the claim of the assessee allowed. Therefore, since there is no factual disparity of the case in this year as well, the claim of the assessee may be allowed on the same footing. The Id.DR on other hand relied upon orders of the Revenue authorities.

9. After hearing both the sides and on perusal of material available on the record, we find section 14A of the Act contemplates that the expenditure incurred in relation to earning of tax free income deserves to be disallowed. During this year, the assessee has earned exempt income of Rs.16,362/- in the form of dividend. Such income has also been made in subsequent assessment years 2013-14 and 2012-13. Assessee has submitted before the Revenue authorities that it has sufficient paid up share capital and reserves and surplus of Rs.20,23,12,982/-, and the AO has not found any investment made out of loan/borrowed funds, and therefore, provisions of section 14A r.w.rule 8D was not applicable to the assessee's case. The assessee has claimed exempt income of Rs.16,362/- only, and therefore, presumption of expenditure calculated on the basis of formula given in Rule 8D is not justified. Hon'ble Gujarat High Court decision in the case of CIT Vs. Corrttech Energy P.Ltd., 45 taxmann.com 116 (Guj) has held that if there is no exempt income claimed by the assessee, then there could not be any disallowance under section 14A of the Income Tax Act. We find that the assessee has not debited any expenditure or has not claimed any expenditure for earning exempt income, then on presumptive basis expenditure cannot be calculated for disallowance. By applying formula given in Rule 8D read with section 14A of the Act, the AO has worked out an estimated disallowance at Rs.4,40,120/-. It is difficult to comprehend, rationality of estimating an expenditure of Rs.4,40,120/- for earning a meager dividend income of Rs.16,362/-. Therefore, considering the facts and circumstances of the case of the assessee, and also following the ratio of the case law cited (supra), we are of the view that disallowance under section 14A cannot exceed the exempt income. Hence, we direct the assessing

officer to restrict disallowance under section 14A to the extent of exempt income earned by the assessee i.e. Rs.16,362/-.

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

Order pronounced in the Court on 27TH January, 2020 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT