IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)
(Through Virtual Court)

ITA. No: 1333/AHD/2013 **(Assessment Year: 2009-10)**

Doshion Ltd. 24-25-26, Phase-II, GIDC Estate, Vatva, Ahmedabad-382440	**V/S**	**ACIT (OSD) Range-1, Ahmedabad**
(Appellant)		**(Respondent)**

PAN: AAACD8771G

Appellant by	**: Shri S. N. Soparkar, AR**
Respondent by	**: Shri Lalit P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 29 -10-2020
Date of Pronouncement : 17-12-2020

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Commissioner of Income Tax ('hereinafter called CIT(A)') order no. CIT(A)-VI/ACIT(OSD)/R-1/331/2011-12 order dated 21/03/2013 arising out of

assessment order dated 29/12/2011. Assessee has taken following grounds of appeal:

2. Brief facts of the case are that the appellant is engaged in the business of manufacturing water treatment plant and Ion exchange Resin in their plant. During the year under consideration the assesse company has maded slump sale to its subsidiary company M/s. Doshion Vealia Water Solutions Private Limited (DVWSPL). The primary facts leading to the addition are that appellant company disclosed long term capital gain of Rs. 3,89,29,011 on the slump sale. This calculation was based on the procedure prescribed under Section 50B of the Act r.w.r. 6H of the IT Rules. The computation of net worth for the purpose of Section 50B was furnished along with the Return of Income in the prescribed form No. 3CEA, duly certified by the Auditors as per the mandatory requirements of the relevant provisions of law. As per calculations contained in the form No. 3CEA, net worth was calculated at Rs. 27,72,70,989/-.

3. During the course of assessment proceedings, Ld. A.O. examined this issue and issued a letter to the assesse that as per calculation, the A.O. was of the opinion that the net worth works out to Rs. 71.80 crores and, therefore, appellant company was called upon to explain this position.

4. The assesse in reply stated that computation is substantiated by form No. 3CEA wherein the value of net worth is shown at Rs. 27,72,70,989/- which is after considering the figures and other asset at Rs. 1,28,73,10,929/- which is arrived after netting off with current liabilities and provisions of Rs. 70.67 crores and the value of liabilities is excluding the same.

5. Assessee further stated that without prejudice what is stated hereinabove, assesse states that it has offered capital gain to tax by considering net worth of Rs. 27.74 crores as against Rs. 71.81 meaning thereby it has offered higher amount of capital than proposed by the ld. A.O. and same figures is substantiated by the appellant company on the basis of audited balance sheet.

6. The both revenue authorities were not agree with the contention of the assessee and made disallowance of Rs. 15,27,8645/- being deduction u/s 80IA of the Act.

7. We have gone through the relevant record and impugned order. The issue before us is whether assesse is entitled for deduction u/s 80IA of the Act or not. At the outset, Ld. A.R. stated that this matter is squarely covered in favour of the assesse in assessee's own case in ITA No. 1895 & 1905/Ahd/2011 for A.Y. 2007-08 and ITA No. 1990 & 2210/Ahd/2011 for A.Y. 2007-08 wherein similar facts and grounds in assessee's own case appeal of the Revenue were dismissed by the Co-ordinate Bench with following observations:

> *25. Ground no. 6 relates to the disallowance of deduction u/s.80IA of the Act in respect of Profit from business of operating and maintaining an infrastructure facility for supply of drinking water.*
>
> *26. During the course of assessment proceedings, the A.O. found that the assessee has claimed deduction u/s. 80IB @ 100% of profit derived from Tamilnadu Water Supply & Drainage (TWAD) unit at Rs. 3,09,59,258/-. Assessee was asked to justify its claim for deduction u/s. 80IA in the light of the amended provisions of the Act. In its reply, the assessee stated that it has entered into agreement with TWAD for maintaining the infrastructure facility. It was strongly contended that the assessee satisfies all the conditions laid down in Section 80IA (4) of the Act and is therefore eligible for the deduction u/s. 80IA of the Act. The*

assessee is only a contractor and not the owner of the plant of TWAD but is a maintenance contractor. The A.O. was of the firm belief that the assessee is only executing works contract awarded by the State Government and therefore not eligible for the claim of deduction u/s. 80IA(4) of the Act. The A.O. accordingly denied the claim of deduction which was confirmed by the ld. CIT(A).

27. Before us, the ld. counsel for the assessee reiterated its claim of deduction. It is the say of the ld. counsel that the impugned project was commenced during A.Y. 2005-06 in which year the assessee had claimed deduction of Rs. 2,11,87,992/- and while allowing the claim of deduction, the A.O. had verified the details of such claim in the light of the provisions of Section 80IA(4) of the Act. The ld. counsel strongly stated that since the claim of deduction in the initial year has been allowed by the A.O. therefore, the same cannot be denied in the subsequent assessment years. The ld. counsel drew our attention to the various clauses of the Agreement No. CER/SR/MDU/25/2003-04/ DT. 27.02.2007. The ld. counsel further drew our attention to the responsibilities of the contractor as exhibited on page 254 of the paper book. The ld. counsel further drew our attention to the fact that after completion of 7 years period, the entire plant has to be handed over to the Board in good working condition. The ld. counsel concluded by saying that the claim of deduction cannot be denied on flimsy ground.

28. Per contra, the ld. D.R. strongly supported the findings of the A.O. It is the say of the ld. D.R. that there is no error in the findings of the ld. CIT(A).

29. We have given a careful consideration to the orders of the authorities below. Before proceeding further, the entire issue revolves around the denial of the claim of deduction by the A.O. heavily relying upon the amended provisions of Section 80IA(4) of the Act. At this juncture, we have to state that the Hon'ble High Court of Gujarat in the case of Katira Construction Ltd. 352 ITR 513 had the occasion to consider whether the explanation is clarificatory and, therefore, has a retrospective effect and the Hon'ble Jurisdictional High Court held as under:-

> *"With effect from April 1, 2002, some significant changes were made in the provisions. Such changes were (i) that sub-section (4) of section 80-IA now required the enterprise to carry on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility in contrast to the previous requirement of all three*

conditions being cumulatively satisfied ; (ii) that the Explanation of the term infrastructure facility was changed to besides others, a road including toll road instead of the hitherto existing expression road; and (iii) that the requirement of transferring the infrastructural facilities developed by the enterprise to the Central or the State Government or the local authority within the time stipulated in the agreement was done away with. These changes, however, would not alter the situation vis-a-vis the Explanation. The basic requirement of the enterprise carrying on the business of developing or operating and maintain or developing, operating and maintaining infrastructure facility was not done away with. Even as amended with effect from April, 2002, section 80IA(4)could be construed as not including execution of works contract as one of the eligible activities for claiming deduction. In 2007, the Explanation below sub-section (13) of section 80-IA came to be added which clarified that nothing contained in the section shall apply to a person who executes a works contract entered into with the undertaking or enterprise, as the case may be. However, this was not found to be sufficient. With a view to preventing such misuse of the tax holiday under section 80-IA, it was proposed to amend the Explanation to clarify that nothing contained in the section shall apply in relation to a business which is in the nature of a works contract executed by an undertaking. What the Explanation, did was to clarify a statutory provision which was at best possible of a confusion. If that be, so, the Explanation must be seen as one being in the nature of plain and simple Explanation and not either adding or subtracting anything to the existing statutory provision. If the Explanation was purely explanatory in nature and did not mend the existing statutory provisions, the question of levying any tax with retrospective effect would not arise. The Explanation only supplied clarity where confusion was possible in the unamended provision. In that view of the matter, this cannot be seen as a retrospective levy."

30. The assessment before us is 2007-08 & 2008-09, therefore the binding decision of the Hon'ble High Court of Gujarat (supra) is directly applicable on the case in hand. As mentioned elsewhere, the initial assessment year is A.Y. 2005-06 and after thorough examination, the claim of deduction was allowed by the Department. In our understanding of the law without disturbing the claim of the initial assessment year, a similar claim cannot be denied in the subsequent assessment years. Considering the facts of the case in the light of the judgment of

the Hon'ble Jurisdictional High Court of Gujarat (supra), we direct the A.O. to allow the claim of deduction of Rs. 3,09,59,258/- u/s. 80IA of the Act. Ground no. 6 is allowed.

8. Thus, in parity with the above said Co-ordinate Bench, we allow this ground appeal of the Revenue.

9. In the result, this ground of appeal is allowed.

10. Now we come to next ground relating to confirming of disallowance of administrative expenses of Rs. 11,93,763/- u/s 14A of the Act.

6. Disallowance of 14A:-

It is seen that the assessee has made investment to earn exempt income. It is seen that the assessee has investment to the tune of Rs. 46,68,87,527/- as on 31/03/2009 while the value of investment was Rs. 1,08,17,749/- as on 31/03/2008. The assessee was show caused vide letter dated 20/09/2011 as to why Rule 8D should not be applied to disallow the expenditure u/s. 14A.

The assessee has submitted the reply vide letter dated 11/10/2011 as under:

Your good selves have observed that company has huge investments as on 31/03/2008 and 31/03/2009, income from which is exempt from tax. Further, it is asked to explain as to why Rule 8D should not be applied to disallow the expenditure under Section 14A.

In this connection, the assessee submits that during the year under consideration it has incurred expenditure ofRs.10,50,574/- by way of interest. The bifurcation of the said expenditure is reproduced herein below:

Particulars	*Amount (Rs.)*
On term Loans taken for the specific purposes regarding business	*10,45,012*
On others	*5,562*

Total	*10,50,574*

On perusal of the above table, your good selves would appreciate that interest paid on term loans is directly attributable to business purposes. Hence application of Rule 8D cannot be made on interest specifically paid on term loans. *Therefore, no disallowance u/s 14A is warranted.*

Without prejudice to above, the assessee states that no borrowed funds have been utilized for making investments, income from which is exempt from tax. . The assessee further states that H had sufficient own funds to cover the investments and that it is a well established fact that no disallowance u/s 14A can be warranted if assessee's own, funds cover the investments out of which exempt income is earned.

As stated above, assessee submits that it has sufficient interest free funds available with it to cover aforesaid investments of and hence no disallowance u/s 14A can be made:

Particulars	*Amount (Rs.) as on 31/3/2008*	*Amount (Rs.) as on 31/3/2009*
(a) Share Capital	*1,98,22,970*	*1,98,22,970*
(b) Reserves & Surpluses	*68,46,00,259*	*68,15,94,210*
Total	*70,44,23,229*	*70,14,17,180*
Investments	*1,08,17,749*	*46,68,87,527*

In support of the above, assessee relies, on the ratio of Hon'ble Supreme Court's decision in case of Munjal Sales Corporation V/s Commissioner of Income-Tax. 298 ITR 298; wherein the Apex Court has observed that the assessee had advanced interest free loan to its sister concern amounting to Rs.5,00,000/-; whereas the opening balance of interest free funds as on 1 April, 1994 was Rs.1.91 crores, which is sufficient to cover the impugned loan ofRs.5 lacs. Hence, there cannot be any disallowance of interest under Section 36(1) (in) of the Act. The assessee also places its reliance on the following decisions:

(a) Decision of the Bombay High Court in CIT v. *Reliance Utilities and Power Ltd. (313 ITR 340)*

(b) Decision of the IT AT, Ahmedabad, in ACIT v Hipolin Ltd. (ITA No. 4259/Ahd/2007.

Further, with regards to the opening investments of Rs. 1,08,17,749/-, the assessee states that

Investments ason31/03/2008	*Taxability of income form investment*	*Reason for no disallowance u/s 14A of the Act.*
(i) Investment of Rs. 4,000/- in Kisan Vikas Patra	*Interest from the same is taxable under the head Other Sources*	*As income is Taxable*
(ii) Investment of Rs. 16,000/- in National Savings Certificate	*Interest from the same is taxable under the head Other Sources*	*As income is Taxable*
(iii) Investment of Rs. 1,06,79,690/- in PT Doshion Indonesia (Not as Indian Company)	*Dividend from the same is taxable under the head Other sources as section 115-0 of the Act is not applicable to the company other than a domestic company*	*As income is Taxable*
(iv) Investment of Rs. 1,18,058/- in Ion Exchange (India) Ltd.	*Dividend from the same is exempt*	*No expenditure has been incurred to earn dividend income. Very negligible amount of investment made out of surplus fund with assesse.*

The contentions of the assessee have been perused. It is pertinent to no1: here that a similar issue was before the Hon'ble Bombay High Court in the; case Godrej & Boyce Mfg. Co. Ltd. Mumbai vs. DCIT and similar contentions including the ratio laid down by various Courts as relied upon by the assessee has been duly dealt by the Hon'ble Court and decided the matter in the favour of revenue.

Section 14A clearly stipulates as under:

> *Expenditure incurred in relation to income not includible to total income. For the purpose of computing the total under this chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."*

Further the assessee must have incurred administrative expenses such as documentation, salaries of employees, handling the investment port folio, administrative over heads like stationery, telephone, computer, office equipments, vehicles etc. every year, a part of which can be attributed to the investment port folio. This view finds support from the following case laws.

(1)Rajasthan State Warehousing Corp. Ltd. V/s. CIT(242 1TR 450) (Raj.)
(2) Maruti Udyog Ltd. Vs. Dep. Comm. (Delhi) 92 TTJ 987
(3) Wipro Information Technology Vs. Dep. CIT (Bang) 88 TTJ 378
(4) Dep. Comm. Of I.Tax Vs. Shree Synthetics Ltd. (Indore) 88 TTJ 717.
(5) Harish K. Bhart Vs. ITO 85 TTJ 872.

It is also to be noted that the matter has been extensively covered and decided in favour of the Revenue in the case of ITO vs. M/s. Daga Capital Management Pvt. Ltd. vide ITA No.8057/Mum/03 for A.Y.2001-02, by Hon'ble Mumbai ITAT (SB). It is also to be noted that S.14A disallows expenditure "in relation to income which does not form part of total.income" and in order for the expenditure to be disallowed, actual income need not be earned. This view has been confirmed in the case of Cheminvest Ltd. vs. ITO (ITAT, Delhi (SB)) in ITA No. 87/Del/2008.

In view of the discussion held above and the position of law with regard to the applicability of provisions of section 8D as interpreted by the Hon'ble High Court, I am not satisfied with regards to the accounts of the assessee-company in relation to earning income that does not form part of the total income of the assessee-company.

Thus, I proceed to compute the expenditure incurred in relation to earning dividend income as per the provisions of section 14A of the Act in the manner as prescribed under Rule 8D of the Act.

11. Thereafter appellant preferred first statutory appeal before the ld. CIT(A) who confirmed the action of the ld. A.O.

12. Now assesse has come before us.

13. We have gone through the relevant record and impugned order. As we can see, assesse has dividend income of Rs. 9,500/- and it is well settled law that no addition can be made more than dividend income. At it is held in the matter of

CIT vs. Vision Finstock Ltd. in Tax Appeal No. 486 of 2017 wherein Jurisdictional High Court has held that disallowance cannot be made more than dividend income and relevant portion of the said judgment is reproduced hereinabove wherein on similar facts and circumstances the Hon'ble Gujarat High Court dismissed the appeal of the Revenue.

> *1. The Revenue has challenged the judgement of the Income Tax Appellate Tribunal dated 07.07.2016 raising following questions for our consideration:*
>
> > *"A. Whether on the facts and circumstances of the case and in law, the ITAT was justified in restricting the disallowance made of Rs. 1,02,82,049/- u/s. 14A to the extent of exempt income of Rs. 55,604/- only?*
> >
> > *B. Whether on the facts and circumstances of the case and in law, the ITAT was justified in restricting the disallowance of Rs. 1,02,82,049/- made u/s. 14A of the Act to the extent of income earned of Rs. 55,604/- without appreciating that the assessee had paid interest of Rs. 1,45,52,632/- on borrowed funds?"*
>
> *2. From the record it emerges that, during the period relevant to the assessment year 2008-09, the assessee had earned exempt income of Rs. 55,604/-. As against that, the Assessing Officer had worked out the disallowance of expenditure under section 14A of the Act read with Rule 8D to Rs. 1,02,82,049/-. The Tribunal, while restricting the disallowance to Rs. 55,604/-, relied on the decision of Delhi High Court in case of Joint Investments (P) Ltd vs. CIT reported in 372 ITR 694 holding that disallowance of expenditure in terms of section 14A read with Rule 8D cannot exceed the exempt income itself. Our High Court has also adopted the similar view in case of Commissioner of Income Tax vs. Corrtech Energy Pvt. Ltd. reported in 372 ITR 97.*
>
> *3. Tax appeal is, therefore, dismissed.*

14. Respectfully following the aforesaid judgment and we allow this ground of appeal of the assesse.

15. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on 17 - 12- 2020

Sd/- Sd/-

(AMARJIT SINGH) **(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER True Copy **JUDICIAL MEMBER**

Ahmedabad: Dated 17/12/2020

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