

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH  
(Conducted Through Virtual Court)  
**Before: Shri Rajpal Yadav, Vice President**  
**And Shri Amarjit Singh, Accountant Member**

**ITA No. 1528 /Ahd/2017**  
**Assessment Year 2013-14**

Rasna Pvt. Ltd. Opp. Sears Tower, Gulbai Tekra, Panchvati, Ahmedabad PAN: AAACW4408M (Appellant)	Vs	The Dy. CIT, Circle-3(1)(2), Ahmedabad (Respondent)
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**ITA No. 2870 /Ahd/2017**  
**Assessment Year 2014-15**

Rasna Pvt. Ltd. Opp. Sears Tower, Gulbai Tekra, Panchvati, Ahmedabad PAN: AAACW4408M (Appellant)	Vs	The Dy. CIT, Circle-3(1)(2), Ahmedabad (Respondent)
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**ITA No. 1788/Ahd/2018**  
**Assessment Year 2015-16**

Rasna Pvt. Ltd. Opp. Sears Tower, Gulbai Tekra, Panchvati, Ahmedabad PAN: AAACW4408M (Appellant)	Vs	The Dy. CIT, Circle-3(1)(2), Ahmedabad (Respondent)
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**Revenue by: Dr. Shyam Prasad, Sr. D.R.**  
**Assessee by: Shri P.F. Jain, A.R.**

Date of hearing : 30-07-2021  
Date of pronouncement : 17-08-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These three appeals filed by assessee for A.Y. 2013-14, 2014-15 and 2015-16, arise from order of the CIT(A), Ahmedabad, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. There was a delay of 105 days in filing the instant appeal. The assessee has filed affidavit stating that the Id. CIT(A) has passed its order on 12<sup>th</sup> December, 2016. The reason for delay in filing appeal was stated because of misdelivering/displaced of CIT(A)’s order. The assessee has also filed copy of speed post envelope addressed by the office of Id. CIT(A) on the back side of the envelope the name of Shr. Rameshbhai along mobile no. was mentioned. It is reported that there was no such person working in the assessee company therefore the Id. CIT(A)’s order was misdelivered/ misplaced. The assessee has stated that except assessment year 2013-14 in all the subsequent assessment years appeal was filed in time. After considering the facts reported by the assessee, it appears, there is reasonable

cause for delay in filing the instant appeal by 105 days because of non-receiving of the order of the Id. CIT(A) by the authorized person of the assessee. In the light of the above fact and decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. MST Katgirors Civil Appeal No. 460 of 1987 holding that "sufficient cause" for the purpose of condonation should be interpreted with a view to do even-handed justice on merit in preference to approach which scuttles a decision on merits, we condone the delay in filing this appeal.

**ITA No. 1528/Ahd/2017 for A.Y. 2013-14**

3. The fact of the case is that assessee filed return of income on 29<sup>th</sup> Nov, 2013 declaring total income at Rs. 12,28,38,184/-. The case was subject to scrutiny assessment and notice u/s. 143(2) of the Act was issued on 4<sup>th</sup> Sep, 2014. The assessment u/s. 143(3) of the Act was finalized on 30<sup>th</sup> December, 2015. Further facts of the case relevant to the issues contested in the appeal are discussed while adjudicating the grounds of appeal of the assessee as follows:-

**Ground No. 1 (Disallowance u/s. 14A of Rs. 41,78,647/-)**

4. During the course of assessment, the Assessing Officer noticed that assessee has claimed exempt income of Rs. 5,33,23,578/- including dividend income of Rs. 1,26,88,771/- in the computation of income. The assessee has disallowed a sum of Rs. 4,75,768/- u/s. 14A. On query, the assessee explained that in view of non-interest bearing fund/surplus fund available with the assessee itself the question of any further disallowance under Rule 8D was not applicable in the case of the assessee. The Assessing Officer has

not agreed with the submission of the assessee. The Assessing Officer stated that no reason has been furnished for non-allocation of common management expenses, therefore, the Assessing Officer has determined the amount of expenditure in accordance in the provision of section 14A(2) r.w.r. 8D to the amount of Rs. 46,54,415/-. After reducing the suo-moto disallowance of Rs. 4,75,768/- made by the assessee, further disallowance of Rs. 41,78,647/- was made and added to the total income of the assessee.

5. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) after referring the decision of his predecessor for assessment year 2010-11 has confirmed the order of Assessing Officer.

6. During the course of appellate proceedings before us, the Id. counsel contended that identical issue on similar facts in the case of the assessee itself for assessment year 2010-11 has been adjudicated by the Co-ordinate Bench of the ITAT vide ITA 2334/Ahd/2015 wherein the disallowance on account of administrative expenditure was restricted up to Rs. 7 lacs after considering the nature of investment made in form of bonds and securities coupled with sufficient interest free funds owned by the assessee . On the other hand, the Id. Departmental Representative has supported the order of lower authorities.

7. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer computed disallowance of administrative expenditure to the extent of Rs. 46,54,415/-. The assessee has suo moto computed such disallowance to the amount of Rs. 4,75,768/- u/s.

14A of the Act. The assessee explained that interest free fund was used for making investment on which exempt income was earned. The assessee also furnished tax audit report and relevant annexure of account indicating that investment was made in tax free bonds and mutual fund in earlier years and claimed that because of nature of investment it had correctly computed the amount of disallowance of administrative expenditure. With the assistance of ld. representatives, we have gone through the decision of Co-ordinate Bench of the ITAT Ahmedabad in the case of the assessee for assessment year 2010-11 vide 2334/Ahd/2015 dated 30<sup>th</sup> Jan, 2019 vide which the disallowance u/s. 14A on account of administrative expenditure was restricted to Rs. 7 lacs after considering the nature of investment made in the form of bonds and securities. The relevant part of the decision of the ITAT is reproduced as under:-

*“27. We have heard the rival contention and perused the material on record carefully. It is noticed that assessee was having sufficient interest free fund as against the investment made on which exempt income was earned. We have gone through working of disallowance made u/s. 14A r.w. Rule 8D of the I.T. Rule and it is noticed that major part of the disallowance was made by the Assessing Officer to the amount of Rs. 20,57,946/- being 0.5% of the average investment for administrative expenditure. After considering the nature of investment made in the form of Bonds & securities we are of the view that it will be appropriate to restrict the disallowance on account of administrative expenses incurred towards earning exempt income to the amount of Rs. 7 lacs. Accordingly, the appeal of the assessee is partly allowed.”*

On perusal of the above referred decision of the ITAT, it is noticed that the decision of ld. CIT(A) pertaining to assessment year 2010-11 on the basis of which the ld. CIT(A) has sustained the impugned disallowance for the year under consideration has been adjudicated by the Co-ordinate Bench of the ITAT and addition on account of administrative expenditure was restricted to the amount of Rs. 7 lacs as against disallowance of Rs. 20,57,946/- made by the Assessing Officer. In the instant case in appeal, the ld. CIT(A) has similarly sustained the addition after following the decision of his

predecessor for assessment year 2010-11. Respectfully following the decision of the Co-ordinate Bench of the ITAT, we restrict the disallowance on account of administrative expenditure incurred towards earning exempt income to the extent of Rs. 14 lacs as against of disallowance of Rs. 46,54,415/- determined by the Assessing Officer after applying the finding of the ITAT decision as cited above wherein comparatively such disallowance was restricted to Rs. 7 lacs considering the disallowance amount of Rs. 20,57,946/- computed by the Assessing Officer on similar facts and circumstances in assessment year 2010-11 by the Assessing Officer. The Assessing Officer is directed to allow deduction of suo-moto disallowance already made by the assessee. Therefore, this ground of appeal of the assessee is partly allowed.

**Ground No. 2 ( Disallowance of Rs. 27,89,536/- u/s. 80IC)**

8. During the course of assessment the Assessing Officer has verified the details of allocation of expenses between the eligible and non-eligible units in view of deduction claimed under the provision of section 80IC of the Act. The Assessing Officer noticed that assessee has not allocated any financial expenses amounting to Rs. 47, 53,000/- (pertaining to domestic sales) to section 80IC eligible unit. The explanation of the assessee mentioned at page 12 of the assessment order is reproduced as under:-

*"In A.Y. 2012-13 amount of Rs.5,69,414/- was treated as allocable and accordingly disallowance of deduction u/s. 80IC of this amount was made. During the year there is net allocable bank interest is Rs. 6,24,072/- and bank charges is Rs. 3,13,703/- aggregating Rs.9,37,775/- and the allocable amount on the basis of ratio of 58.67% it will come to Rs.5,50,193/-".*

Accordingly, on the basis of allocation of rate of 58.69%, the Assessing Officer has computed an amount of Rs. 27,89,536/- being 58.69% of the

financial expenses to 80IC unit. The same was reduced from the deduction claimed by the assessee u/s. 80IC

9. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that during the course of appellate proceedings the assessee had not pressed the similar ground of appeal in assessment year 2012-13.

10. Heard both the sides and perused the material on record. During the course appellate proceedings the ld. counsel has neither disproved the findings of the lower authorities nor brought any material on record in contrary to the finding of the lower authority. Therefore, we do not find merit in this ground of appeal of the assessee and the same is dismissed.

**Ground No. 3 (Disallowance u/s. 36(1)(va) of Rs. 2,43,874/-**

11. During the course of assessment, the Assessing Officer noticed that assessee has not deposited the employee's contribution amounting to Rs. 2,43,874/- to ESIC in the employee's account in the relevant fund on or before the due date. The detail of such amount was computed by the Assessing Officer at page no. 13 of the assessment order at Rs. 2,43,874/-. Therefore, the Assessing Officer has disallowed the same in view of the specific provision of section 36(1)(va) r.w.s. 2(24)(v) of the act, the deduction for the employees contribution is allowable only if such sum is credited by the assessee to the employees account in the relevant fund or funds on or before the due date.

12. The assessee has filed appeal before Id. CIT(A). The Id CIT(A) has dismissed the appeal of the assessee stating that assessee has not pressed for this ground of appeal.

13. We have heard the rival contentions and perused the material on record carefully. The assessee has not deposited the contribution received from the employees under the ESI Act within the due date as prescribed in the ESI Act amounting to Rs. 2,43,874/- The Ld. counsel has referred the decision of ITAT Hyderabad in the case of Value Momentum Software Services Pvt. Ltd. vs. DCIT vide ITA No. 2197/Hyd/2017 dated 19-05-2021. We do not find any force in the contention of the Id. counsel regarding relevancy of the said decision to the specific issue and facts of the case of the assessee after considering that the identical issue on similar facts has been adjudicated by the Hon'ble Jurisdictional High Court of Gujarat in the case of Gujarat State Road Transport Corporation. We consider that the Hon'ble Jurisdictional High Court in the case of CIT vs. Gujarat State Road Transport Corporation 265 CTR 64 has held that when the employer has not credited the sum received by it as employees contribution to employees account in relevant fund on or before the due date as prescribed in explanation to section 36(i)(va) the assessee shall not be entitled to deduction. In view of the above, facts and judicial findings, we uphold the decision of Id. CIT(A). Accordingly, this ground of appeal of the assessee is dismissed.

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

**ITA No. 2870/Ahd/2017 A.Y. 2014-15**



**Ground No. 1 (a) (Disallowance u/s. 14A of Rs. 43,49,310/-)**

15. During the course of assessment, the Assessing Officer noticed that assessee claimed exempt income of Rs. 2,87,28,799/- including dividend income of Rs. 26,63,671/- in the computation of income. The assessee has disallowed a sum of Rs. 12,55,562/- u/s. 14A. The assessee explained that disallowance u/s. 14A was made of Rs. 12,55,562/- in view of interest bearing fund/surplus fund available no further disallowance to be made in the case of the assessee. The Assessing Officer has not agreed with the submission of the assessee and stated that no reason has been furnished for non-allocation of common management expenses. The Assessing Officer has computed the amount of disallowance in accordance in the provision of section 14A(2) r.w.r. 8D to the amount of Rs. 56,04,872/- after reducing the suo moto disallowance made by the assessee of Rs. 12,55,562/- further disallowance of Rs. 43,49,310 was made u/s. 14A of the act and added to the total income of the assessee.

16. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) after referring the decision of his predecessor for assessment year 2010-11 to 2031-14 has confirmed the order of Assessing Officer.

17. During the course of appellate proceedings before us, the Id. counsel has contended that identical issue on similar facts in the case of the assessee itself for assessment year 2010-11 has been adjudicated by the Co-ordinate Bench of the ITAT vide ITA 2334/Ahd/2015 wherein the disallowance on account of administrative expenditure was restricted up to Rs. 7 lacs after considering the nature of investment made in form of bonds and securities

coupled with sufficient interest free funds owned by the assessee . On the other hand, the Id. Departmental Representative has supported the order of lower authorities

18. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer computed disallowance of administrative expenditure to the extent of Rs. 56,04,892/-. The assessee has suo moto computed such disallowance to the amount of Rs. 12,55,562/- u/s. 14A of the Act. The assessee has explained that all investments have been made from the accrued funds. The assessee has furnished tax audit report and relevant annexure of account indicating that investment was made in tax free bonds in earlier years and claimed it has not made any new investment during the year. Respectfully following the decision of the Co-ordinate Bench of the ITAT, ground no. 1 of ITA 1528/Ahd/2017 as per para 7 of this order, we are of the view that disallowance of administrative expenditure incurred towards earning exempt income to the extent of Rs. 15 lacs is appropriate as against disallowance of Rs. 56,04,892/- determined by the Assessing Officer after applying the findings of Assessing Officer elaborated on similar issue at para 7 of this order. The Assessing Officer is directed to allow deduction of suo-moto disallowance already made by the assessee. Therefore, this ground of appeal of the assessee is allowed.

**Ground No. 1 (b) (Disallowance u/s. 36(1)(iv) of Rs. 13,95,100/-)**

19. The assessee has not deposited the expenses contribution to PF and ESIC in the relevant fund on or before the due date. Therefore, as per the details of such contribution mentioned at page no. 6 of Assessing Officer

amount of Rs. 13,95,100/- was disallowed in view of the specific provision of section 36(1)(va) read with section 2(24)(x) of the Act by the Assessing Officer and added to the total income of the assessee.

20. The Id. CIT(A) has sustained the disallowance following the decision of Jurisdictional Hon'ble High Court of Gujarat in the case of CIT vs. Gujarat State Road Transport Corporation (2014) 41 taxman.com 100 (Gujarat)

21. Without reiterating the similar submission of the assessee as mentioned at para 11 of this order while adjudicating the ground of appeal no. 3 of the assessee vide ITA No. 1528/Ahd/2017 for assessment year 2013-14, this ground of appeal of the assessee stands dismissed after applying the finding given at para 13 of this order pertaining to the above referred similar issue and identical facts in the case of the assessee. Therefore, this ground of appeal of the assessee is dismissed.

**Ground No. 3 (interest u/s. 234A of Rs. 98, 316)**

22. This ground of appeal stands dismissed as levying of interest u/s. 234A is mandatory as prescribed in the law.

**ITA No. 1788/Ahd/2017 A.Y. 2015-16**

**Ground No. 1 (Disallowance u/s. 14A of Rs. 30,13,733/-)**

23. During the course of assessment, the Assessing Officer noticed that assessee has claimed exempt income from dividend, tax free bond etc. On query, regarding disallowance u/s. 14A, the assessee explained that in the Tax Audit Report, the Auditor has already made disallowance of Rs.

2,77,536/- which also included Rs. 29,158/- pertaining to disallowance of interest on bank overdraft. The assessee also explained that it was having own interest free funds which was more than the amount of investment made in the funds from which exempt income was earned. The Assessing Officer has not agreed with the submission of the assessee. Therefore, the Assessing Officer has determined the amount of expenditure in accordance in the provision of section 14A(2) r.w.r. 8D to the amount of Rs. 32,88,401/- and after reducing the suo-moto disallowance of Rs. 2,74,668/- made by the assessee, further disallowance of Rs. 30,13,733/- was made u/s. 14A of the act.

24. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) referring the decision of his predecessor for assessment year 2010-11 confirmed the order of Assessing Officer.

25. During the course of appellate proceedings before us, the Id. counsel has contended that identical issue on similar facts in the case of the assessee itself for assessment year 2010-11 has been adjudicated by the Co-ordinate Bench of the ITAT vide ITA 2334/Ahd/2015 wherein the disallowance on account of administrative expenditure was restricted up to Rs. 7 lacs after considering the nature of investment made in form of bonds and securities coupled with sufficient interest free funds owned by the assessee . On the other hand, the Id. Departmental Representative has supported the order of lower authorities.

26. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer has computed disallowance of administrative expenditure to the extent of Rs. 32,14,661/- and disallowance of interest expenses at Rs. 73,740/-. The assessee has suo moto computed such disallowance to the amount of Rs. 2,77,536/- comprising an amount of Rs. 2,48,378/- towards administrative expenses and Rs. 29,158/- towards interest on bank overdraft. The assessee explained that it was having sufficient interest free funds out of which concerned investment has been made and pleaded that because of nature of investment it has correctly computed the disallowance of administrative expenditure. The Assessing Officer has not made specific reasons for not satisfying the correctness of the claim of the assessee in respect of such expenditure therefore applying the findings of ground of no. 1(d) vide ITA 1528/Ahd/2017 as per para 7 of this order, we are of the view that it would be appropriate to restrict the disallowance on account of administrative expenditure incurred towards earning exempt income to the extent of Rs. 12 lacs as against similar disallowance of Rs. 32,14,661/- made by the Assessing Officer. The Assessing Officer is directed to allow deduction of suo-moto disallowance already made by the assessee. Therefore, this ground of appeal of the assessee is partly allowed.

**Ground No. 3 (Disallowance u/s. 36(1)(va) of Rs. 292,657/-**

27. During the course of assessment, the Assessing Officer noticed that assessee has not deposited the employee's contribution to ESIC in the employee's account in the relevant fund on or before the due date. The detail of such amount was computed by the Assessing Officer at page no. 13

of the assessment order at Rs. 2,92,658/-. In view of the specific provision of section 36(1)(va) r.w.r. 2(24)(v) of the act the deduction for the employees contribution is allowable only if such sum is credited by the assessee to the employees account in the relevant fund or funds on or before the due date. Consequently, the Assessing Officer has disallowed the same and added to the total income of the assessee.

28. The assessee has filed appeal before Id. CIT(A). The Id CIT(A) has dismissed the appeal of the assessee stating that assessee has not pressed for this ground of appeal.

29. Heard both the sides and perused the material on record. Without reiterating the facts as mentioned above Hon'ble Jurisdictional High Court in the case of Gujarat State Road Transport Corporation 265 CTR 64 held that deduction is not allowable if employees has not credited the sum received from employee's contribution in the employees account in the relevant fund on or before the due date. Without reiterating the similar submission made by the assessee for assessment year 2013-14 and assessment year 2014-15 as reported at para 13 of this order after applying the findings given at para 21 of this order, this ground of appeal of the assessee stands dismissed.

**Ground No. 3 (interest u/s. 234B of Rs. 10,06,110 and u/s. 234C of Rs. 9,91,453/-)**

30. This ground of appeal stands dismissed as levying of interest u/s. 234A is mandatory as prescribed in the law.

**Additional ground of appeal A.Y. 2013-14 vide ITA 1528/Ahd/2017  
and Additional ground for A.Y. 2014-15 vide ITA 2870/Ahd/2017**

31. These two identical grounds of appeals for assessment year 2013-14 and 2014-15 has been raised on the issue of adding the disallowance made u/s. 14A in the book profit while computing book profit. The ld. counsel contended that issue is covered in favour of the assessee in view of the decision of ITAT Special Bench Delhi in the case of ACIT vs. Vineet Investment. The ld. Departmental Representative is fair enough not to controvert the aforesaid contention of the ld. counsel.

32. Heard both the sides and perused the material on record.

33. The Special Bench of the Delhi ITAT in the case of ACIT vs. Vineet Investment Pvt. Ltd. (2017) 165 ITD 27/82 taxmann.com has held that expenses incurred to earn exempt income not to be added for computing book profit u/s. 115JB of the Act. Therefore, we allow these additional grounds of appeals of the assessee.

34. In the combined result, all the three appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 17-08-2021

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT  
Ahmedabad : Dated 17/08/2021**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद