

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER  
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER  
(Virtual Hearing)

**आ.अ.सं./I.T.A No.404/SRT/2019**  
**निर्धारण वर्ष/Assessment Year: 2012-13**

M/s.Begani Dyeing Mills Pvt. Ltd., 11 to 15, Tara Industrial Estate, Opp. Gangdhi Kutir, Udhna Magdalla Road, Surat – 395007.  [PAN: AAACB 9634 L]	Vs	The Principal Commissioner of Income Tax-1, Surat.
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओर से /Assessee by	Shri Rasesh Shah – AR
राजस्वकीओर से /Revenue by	Shri S.T.Bidari – CIT(DR)

सुनवाई की तारीख/ Date of hearing:	22.03.2021
उद्घोषणा की तारीख/Pronouncement on:	22.03.2021

**आदेश /O R D E R**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal filed by the Assessee is directed against the order of Learned Principal Commissioner of Income Tax, Surat-1, Surat hereinafter referred as “Ld. PCIT” , passed under section 263 dated 07.12.2018 for the A.Y.2012-13. The Assessee raised the following grounds of appeal:

*“1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s . 263 by invoking of Section 263 of the Act, although the assessment order passed u/s. 147 r.w.s 143(3) of the I. T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.*

2. *On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the assessment with the direction to frame the assessment de novo after making disallowance of interest expenditure u/s 14A read with rule 8D when in the original assessment the disallowance u/s 14A was made of Rs. 2,35,039/- which is more than the exempt dividend income of Rs.2,02,337/-.*
3. *It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or modified as your honours deem it proper.*
4. *Appellant craves leave to add, alter or delete any ground (s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that assessee is a private limited company engaged in the business of Dyeing and Printing works on job basis and sale of grey fabrics filed its return of income for impugned assessment year on 29.09.2012 declaring return of Rs.9,40,110/-. The case was selected for scrutiny. The Assessing Officer (AO) while passing the assessment order made disallowance under section 14A of the Act of Rs. 2,35,039/-. The AO before making disallowance under section 14A of the Act, issued show cause notice by taking view that during the relevant period under consideration, the assessee invested Rs.1.40 crore in share of private limited company. Before that, there was trade investments in shares of Sachin Infra Management Pvt. Ltd., thus, the A.O. asked the assessee as to why disallowance under section 14A be not made. The assessee filed its reply. The assessee in its reply stated that the assessee

company had not earned income which does not form part of total income. The contention of assessee was not accepted by the AO. The AO invoked the provision of Rule 8D and made a disallowance of Rule 8D(2)(ii) of Rs.2,35,039/- and disallowance under Rule 8D(2)(iii) of Rs.52,250/-, thus, total disallowance worked out at Rs.2,35,039/- in assessment order dated 30.01.2015. The case was again reopened under section 147 of the Act on the issue of deduction of section 80IA of the Act. The AO after completing required formality and giving opportunity made disallowance of Rs.3,73,098/- under section 80IA of the Act in assessment order passed under section 147 read with section 143(3) dated 28.12.2017.

3. The Id. PCIT issued show cause notice under section 263 of the Act dated 13.11.2018 by taking view that the AO worked out disallowance under section 14A of the Act of R.2,35,039/- in scrutiny assessment. The scrutiny of working of disallowance reveals that disallowance was not worked out correctly. The AO held that entire interest expenditure attributable to exempt income. However, it must be computed under Rule 8D of the Income Tax Rules. Omission to do so, the disallowance was correctly computed to Rs.2,35,039/- instead of Rs.5,25,310/-, which resulted into underassessment of income of assessee by Rs.2,90,271/-. Thus, the assessment order passed by the AO is

erroneous and prejudicial to the interest of the Revenue. The assessee filed its reply. The reply of assessee is extracted in para 2.1 of the assessment order. Besides the other contention, the assessee in its reply stated that the AO while passing the assessment order under section 143(3) of the Act on 30.01.2015 the A.O. made disallowance of Rs.2,35,039/-. The assessee has earned dividend income/exempt income only of Rs.2,02,337/-, so the maximum disallowance should not exceed to the extent of exempt income. The assessee also relied on certain case laws. The contention of assessee was not accepted by ld. PCIT. The ld. PCIT held that total disallowance under section 14A of the Act must be Rs.5,25,310/-, the AO made disallowance of Rs.2,35,039/-, which resulted into under assessment. The ld. PCIT held that assessment order passed under section 143 r.w.s 147 of the Act dated 28.12.2017 is erroneous and prejudicial to the interest of justice and the same is set aside with the direction to the assessing officer to pass the order de-novo. Thus, aggrieved by the order of ld.PCIT, the assessee has filed appeal before Tribunal.

4. We have heard the submissions of the ld. Authorised Representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and gone through the orders of the lower authorities. The Ld. AR for the

assessee submits that he has two fold submission. In his first submission, the learned AR for the assessee submits that issue of section 14A of the Act was examined by AO in the assessment order passed under section 143(3) of the Act on 30.01.2015. Admittedly, the assessment was reopened under section 147 on the issue of deduction under section 80IA of the Act. In re-assessment, there was no issue with regard to the disallowance of 14A of the Act. The ld. PCIT though in concluding part of assessment order set-aside the assessment order under section 143(1) of the Act dated 28.02.2017. In fact, there is no addition/disallowance issued of 14A of the Act in this assessment order dated 28.02.2017. The issue of 14A of the Act was raised, discussed and disallowed by the AO in assessment order dated 30.01.2015 passed under section 143(3). The learned AR for the assessee submits that order dated 30.01.2015 could be revised up to 31.03.2017. As per section 263(2) of the Act. Admittedly, the order under section 263 of the Act is passed on 07.12.2018, which is beyond the prescribed period of limitation of two years from the end of relevant assessment year when the assessment order was passed. In support of his submission, the learned AR of the assessee relied upon the decision of Hon'ble Supreme Court in

CIT Vs. Alagendran Finance Lt. [162 Taxmann 465] (SC) and  
CIT Vs. ICICI Bank Ld., [19 taxmann.com 142] (Bombay HC).

5. In second alternative submission, the learned AR of the assessee submits that it is settled law that disallowance under section 14A of the Act should not exceed the exempt income. The assessee earned exempt income of Rs.2,02,337/-, the AO already disallowed more than the exempt income i.e. Rs.2,35,039/-, therefore, the order passed by the AO is not erroneous. The learned AR for the assessee submits that the twin condition as enunciated under section 263 of the Act is not met out. Therefore, the assessee is liable to be succeeded on merit as well.
6. On the other hand, the Id.CIT(DR) for the Revenue supported the order of Id.PCIT.
7. We have considered the rival submission of both the parties and deliberated on the facts of the case and various case laws relied by the learned AR of the assessee. Admittedly, the issue of section 14A of the Act was discussed and disallowance was made by the AO in the assessment order dated 30.01.2015. As per the provision of section 263(2) of the Act, no order shall be made under sub-section (1) after expiry of two (02) years from the end of financial year in his order said to be revised was passed. As noted above, the assessment order was passed on

30.01.2015. Admittedly, the assessment was reopened under section 147 on the issue of deduction under section 80IA of the Act. In the re-assessment order the A.O. has not examined the issue of section 14A. Thus, from the facts it is clear that the Ld. PCIT, while revising the assessment order in fact revised the assessment order date 30.01.2015 passed under section 143(3). The ld. PCIT passed order under section 263(1) of the Act on 07.12.2018, which is beyond the two (02) years period of limitation, therefore, the order passed by the ld. PCIT is barred by limitation, which we hold so.

8. Even on merit, we find that the assessee in reply to show cause notice under section 263 of the Act has specifically stated that the assessee has earned total exempt income of Rs.2,02,337/- and the maximum disallowance should not exceed to the exempt income. The ld.PCIT instead of accepting the contention of assessee proceeded to direct the AO to frame the *de-novo* assessment. Considering the fact that it is settled law that disallowance under section 14A of the Act should not exceed the exempt income, thus, we are of the view that the assessment order dated 30.01.2015 was otherwise not erroneous. Thus, the assessee is also succeeded on merit.
9. In the result, appeal of the assessee is allowed.

Order pronounced on 22.03.2021 by placing result on notice  
board.

**Sd/-**

**(Dr. ARJUN LAL SAINI)**

**(लेखा सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

**(PAWAN SINGH)**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

सुरत/ **Surat**, दिनांक **Dated:** 22<sup>nd</sup> March , 2021 /#SGR

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A) ITAT (DR)/Guard file of ITAT.

**By order**

/ / **TRUE COPY** / /

**Assistant Registrar, Surat**