

[2014] 45 taxmann.com 116 (Gujarat)/[2014] 223 Taxman 130 (Gujarat)/[2015] 372  
ITR 97 (Gujarat)/[2014] 272 CTR 262 (Gujarat)

**IT : Where assessee has not sought any income exemption, there cannot be any expense thereagainst to be disallowed**

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[2014] 45 taxmann.com 116 (Gujarat)

**HIGH COURT OF GUJARAT**

**Commissioner of Income-tax - I**

**v.**

**Corrtch Energy (P.) Ltd.\***

AKIL KURESHI AND MS. SONIA GOKANI, JJ.  
TAX APPEAL NO. 239 OF 2014<sup>±</sup>  
MARCH 24, 2014

**Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Conditions precedent) - Whether where assessee did not make any claim for exemption of any income from payment of tax, disallowance under section 14A could not be made - Held, yes [Para 4] [In favour of assessee]**

## **FACTS**

- The assessee invested some money in shares out of the funds available to him. He borrowed funds for his business. The interest expenses claimed by the assessee was disallowed proportionately by the Assessing Officer under section 14A by applying rule 8D.
- On appeal, the Commissioner (Appeals) confirmed such disallowance by observing that the assessee made investment in shares which would result only in dividends which would be exempt from tax and that not receiving any exempt income during current year would not entitle assessee to claim expenses related to investments.
- On second appeal, the Tribunal held that the assessee had not claimed any exempt income in this year, in such a situation section 14A could have no application. The Tribunal, deleted the addition made under section 14A.
- On appeal:

## **HELD**

- Section 14A(1) provides that for the purpose of computing total income under chapter IV, 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 the Act. In the instant case, the Tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on

this basis that the Tribunal held that disallowance under section 14A could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of *CIT v. Winsome Textile Industries Ltd.* [\[2009\] 319 ITR 204](#) in which also the Court had observed that where the assessee did not make any claim for exemption, section 14A could have no application.

- Thus, no question of law arose. [Para 5]

## **CASES REFERRED TO**

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*CIT v Winsome Textile Industries Ltd.* [\[2009\] 319 ITR 204 \(Punj. & Har.\)](#) (para 4).

**Mrs. Mauna M. Bhatt** for the Appellant.

## **ORDER**

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**Akil Kureshi, J.** - Revenue has challenged the judgment of the Income Tax Appellate Tribunal dated 21.10.2013 raising following questions for our consideration :

- "(A) Whether the Appellate Tribunal has substantially erred in deleting the addition of Rs. 12.33 lacs made u/s 14A despite the fact that the assessee had made investment of Rs.2.75 crores and had also claimed interest expenses of Rs.72.08 lacs. The AO had only disallowed proportionate expenses under Rule 8D(2)(ii)(iii)?
- (B) Whether the Appellate Tribunal has substantially erred in deleting the disallowance of interest of Rs.3.94 lacs despite the fact that the assessee had claimed interest expenses of Rs.72.08 lacs and had given interest free advances of Rs. 32.91 lacs to related parties. Interest expenses to that extent were therefore not deductible u/s 36(1)(iii)?"

2. Counsel for the Revenue submitted that question no.2 is not pressed in this appeal since it does not arise out of the impugned judgement of the tribunal.

3. That leaves us only with one question which pertain to disallowance of expenditure of Rs. 12.33 lacs made by the Assessing Officer under section 14A of the Income Tax Act, 1961 ("the Act" for short). Such disallowance was confirmed by CIT(Appeals). The tribunal in further appeal by the assessee however, reversed the same making the following observations :

"13. We have heard the rival contentions, perused the material on record and gone through the orders of the authorities below. We find that the Id. CIT(A) has decided this issue as under :

3.2 As regards interest, appellant had borrowed funds on which interest was paid. While making investments, both borrowed funds as well as own funds were used hence one cannot say that borrowed funds were used only for business purpose and owned capital was only used for investment. Admittedly no separate accounts are maintained for business and investment activities therefore appellant's claim is not justified that borrowed funds were not used in making investment. In view of this, I do not agree with my predecessor that since appellant had sufficient interest free funds, no part of borrowed funds can be attributed to investments. Further, appellant's argument that it did not earn any exempt income during the year and therefore no disallowance of section 14A can be made is without any basis. Since appellant made investment in shares which will result only in dividends which are exempt from tax, not receiving any exempt income during the year will not entitle appellant to claim expenses relating to investments which will result only in exempt income. Therefore in the absence of clear cut details of utilisation of funds, the formula given in rule 8D which is mandatory this year is to be applied. Since assessing officer worked out interest disallowance as per rule 8D, the interest disallowance is confirmed.

The Id. AR submitted that this finding of Id. CIT(A) is containing to the law settled by various judicial pronouncements. We have given our thoughtful consideration to the facts and the decision relied upon by the Id. AR. The Hon'ble Punjab & Haryana High Court in the case of *CIT v. Winsome Textile Industries Ltd.* [\[2009\] 319 ITR 204](#) has held that in the present case, admittedly, the assessee did not make any claim for exemption. In such a situation, section 14A could have no application. In this case also, the

assessee has not claimed any exempt income in this year. Therefore, respectfully following the judgement of Hon'ble High Court of Punjab & Haryana in the case of *Winsome Textile Industries Ltd. (supra)*, we hereby allow this ground and direct the AO to delete the addition. Therefore, ground Nos. 1 to 1.2 raised by the assessee in its cross-objection are allowed."

4. Counsel for the Revenue submitted that the Assessing Officer as well as CIT(Appeals) had applied formula of rule 8D of the Income Tax Rules, since this case arose after the assessment year 2009-2010. Since in the present case, we are concerned with the assessment year 2009-2010, such formula was correctly applied by the Revenue. We however, notice that sub-section(1) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, 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 the Act. In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of *CIT v Winsome Textile Industries Ltd.* [\[2009\] 319 ITR 204](#) in which also the Court had observed as under :

"7. We do not find any merit in this submission. The judgement of this court in *Abhishek Industries Ltd (2006) 286 ITR 1* was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application."

5. We do not find any question of law arising, Tax Appeal is therefore dismissed.

PAMPA

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\*In favour of assessee.

†Arising out of order of Tribunal dated 21-10-2013.