

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2584/Bang/2017
Assessment Year :2011-12

M/s. Maa Group Holdings Pvt. Ltd., No. 6, MAA House, Service Road, Domlur, Bangalore – 560 071.  <b>PAN: AAACC6039N</b>	Vs.	The Income Tax Officer, Ward – 4 (1) (3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E. Subramanian, CA
Respondent by	:	Shri B.R. Ramesh, JCIT (DR)

Date of hearing	:	02.04.2018
Date of Pronouncement	:	06.04.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A)-4, Bangalore dated 31.08.2017 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

*“1. The impugned order under section 154 passed by the Ld AO and confirmed by the Ld CIT(A) is opposed to facts and law insofar as it is prejudicial to the interests of the Appellant.*

*2. The impugned order passed under section 154 of the Act, by the Ld AO is invalid and bad in law inasmuch as there is no mistake apparent from record and the AO has initiated rectification proceedings merely on the basis of change of opinion.*

*Without prejudice to the above grounds, the Appellant also puts forth the following grounds that:*

*3. The Ld. CIT (A) erred in confirming the order of Ld. Assessing Officer, making the disallowance under section 14A and in doing so,*

*a) The Ld. CIT(A) failed to appreciate the fact that the Appellant is in the business of trading in shares and securities, and a portion of*

*the dividends were received on shares held in the ordinary course of business as stock-in-trade on which the application of rule 8D does not arise.*

*b) The Ld. CIT(A) failed to appreciate the fact that the Appellant had disclosed these transactions clearly in the financial statements and the same were available before the assessing authorities at the time of assessment and the assessment orders were passed after considering/ he same and after due application of the mind.*

*4. Without prejudice to the above grounds and as an alternate thereto, the appellant submits that even if disallowance under rule 8D were to be made, the same should be worked out only on the average value of the investments that actually yielded exempt income during the year under assessment.*

*The Appellant prays for leave to add, modify, delete or introduce additional Grounds of Appeal at any time before the Appeal is disposed off.*

***Based on these and such other grounds that may be adduced from time to time, the Appellant requests the Honourable Income Tax Appellate Tribunal to consider the petition in the light of principles of justice and cancel the Order of Rectification passed by the Assessing Officer.”***

3. It was submitted by Id. AR of assessee that the order passed by the AO u/s. 154 is bad in law because the disallowance u/s. 14A is a debatable issue and therefore, for making disallowance u/s. 14A of IT Act, the AO cannot take the help of section 154 of IT Act. In support of this contention, he placed reliance on Tribunal order rendered in the case of M/s. Advanced Micro Devices Pvt. Ltd. Vs. ACIT as reported in TS-7429-ITAT-2016 (Chandigarh)-O, copy available on pages 1 to 9 of case law compilation filed by Id. AR of assessee. He pointed out that in para 2 of this Tribunal order, the facts are noted and it can be seen that facts are similar to the facts of the present case and the decision is contained in paras 12 and 13 of Tribunal order as per which it is held that the proceedings u/s. 154 of IT Act for making disallowance u/s. 14A of IT Act is wholly unjustified. At this juncture, the bench wanted to know as to what was the Assessment Year involved in that case and in reply, it was submitted by Id. AR of assessee that the Assessment Year involved in that case was Assessment Year 2007-08. The bench also wanted to know from Id.

AR of assessee as to whether any material is available in paper book as per which it can be said that the issue involved is debatable even after Rule 8D has been introduced from a. Y. 2008 – 09. In reply, it was submitted by Id. AR of assessee that no such material is available but disallowance u/s. 14A is debatable. The Id. DR of revenue supported the order of CIT (A).

4. We have considered the rival submissions. We find that in the case of M/s. Advanced Micro Devices Pvt. Ltd. Vs. ACIT(supra), the Assessment Year involved was 2007-08 and Rule 8D has become operative from Assessment Year 2008-09. In para 6(ii) of this Tribunal order, this was held that disallowance with regard to Assessment Year 2007-08 by applying Rule 8D is legally not correct. Since the Assessment Year involved in the present case is 2011-12 i.e. after Rule 8D has become operative since Assessment Year 2008-09, this Tribunal order in our considered opinion is not applicable in the present case. We also find that as per the balance sheet of the assessee company available on page no. 13 of the paper book, in the present year, the amount of investments was of Rs. 4,56,91,843/- whereas the amount of interest free own funds available with the assessee was only Rs. 3,75,30,364/-. Hence it is seen that even if it is considered that entire interest free own funds is used for making investments then also, it has to be accepted that the balance amount of investment was out of interest bearing borrowed funds on which interest of Rs.16,27,779/- was paid and debited to P&L account as per schedule 8 available on page no. 29 of the paper book and this is admitted position of fact that as per computation of income available on page no. 9 of the paper book, no disallowance was made out of interest expenditure u/s. 14A of IT Act and as per the assessment order also, no disallowance was made by the AO u/s. 14A and this also could not be shown by Id. AR of assessee that enquiry was made by the AO in course of assessment proceedings in respect of applicability of section 14A of IT Act. As per the impugned order passed by the AO u/s. 154, it is noted by the AO that in response to the notice u/s. 154 dated 12.03.2015, Shri H.B. Sunil, Chartered Accountant and AR of assessee appeared and filed a letter dated 17.03.2015 along with a working of disallowance u/s. 14A and other details. It is also noted that the assessee had claimed that dividend of

Rs. 20,41,791/- was received and the same was claimed as exempt u/s. 10(34) of IT Act. Hence it is seen that this is an apparent mistake in the assessment order that no disallowance was made u/s. 14A although the assessee had shown in the computation of income that there is exempt income of Rs. 20,41,791/- and as per the P&L account and balance sheet, there was interest expenditure and interest free own funds available with the assessee were not enough to make the investment of Rs. 4,56,91,843/-. This is also seen that Rule 8D is applicable in the present year and as per Rule 8D, in the case of mixed funds i.e. interest free funds and interest bearing funds, proportionate disallowance out of interest expenditure should be made as per Rule 8D. Hence we hold that there is no merit in the ground no. 2 raised by the assessee before us and the same is therefore rejected.

5. Regarding ground no. 3, various arguments were made by Id. AR of assessee but when the bench pointed out that now as per the judgment of Hon'ble Apex Court rendered in the case of Maxopp Investment Ltd. Vs. CIT as reported in 91 taxmann.com 154, it was held that intention of making investment while making the purchase of investments which results in earning non-taxable income is not relevant for determining the disallowance u/s 14A and it has to be made even if the shares are purchased for dealing in shares. Respectfully following this judgment of Hon'ble Apex Court, we hold that there is no merit in ground no. 3 raised by the assessee. The same is also rejected.
6. Regarding ground no. 4, it was submitted that if it is held that disallowance has to be made u/s. 14A r.w.Rule 8D then the same should be worked out only on the average value of the investments which actually yielded exempt income in the year under consideration. We find that the details of investments of Rs. 4,56,91,843/- is available on page no. 23 of paper book out of which one investment of Rs. 49,58,633/- is in equity shares of Tag Inc., USA. Since the dividend on equity shares of foreign company is taxable in India and this is not tax free, said investment cannot be considered for the purpose of making disallowance u/s. 14A of IT Act. We direct the AO to recompute the amount of disallowance u/s. 14A accordingly. Regarding this contention that only those

investments should be considered from which actual dividend was received in the present year and the other investments should be ignored for the purpose of computing disallowance u/s. 14A r.w.Rule 8D, we find that the Id. AR of assessee has placed reliance on a Tribunal order rendered in the case of ACIT Vs. Vireet Investment Pvt. Ltd. as reported in 58 ITR (Trib) 313 (ITAT(Del)), copy available on pages 33 to 94 of case law compilation. In the said Tribunal order, we find that in para 10 of this Tribunal order, the Tribunal has duly considered the judgment of Hon'ble Delhi High Court rendered in the case of Cheminvest Ltd. Vs. CIT as reported in 378 ITR 33 (Delhi) and also the judgment of Hon'ble Apex Court rendered in the case of Rajendra Prasad Moody as reported in 115 ITR 519 and it was held as per para 11.16 that only those investments are to be considered for computing the average value of investment which yielded exempt income during the year under consideration. Respectfully following this Tribunal order, we direct the AO to recompute the amount of disallowance u/s. 14A by considering only those investments which yielded exempt income in the present year. Ground no. 4 is allowed for statistical purposes and the matter is restored back to the file of AO to recompute the amount of disallowance to be made u/s. 14A in line with above discussion.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(N.V. VASUDEVAN)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 06<sup>th</sup> April, 2018.  
/MS/

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.