

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA No. 358/Mum/2018
(Assessment Year: 2007-08)

Shri Manoj Vasudev Wadhwa 11 Happy Home 244, Waterfield Road Bandra (W), Mumbai 400050	Vs.	A C I T - 19(3) Piramal Chamber Lower Parel Mumbai 400007
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PAN – AALPW0303K

Appellant

Respondent

ITA No. 325/Mum/2018
(Assessment Year: 2007-08)

Income Tax Officer-13(3)(3) Room No. 227, 2 nd Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	Shri Manoj Vasudev Wadhwa 11 Happy Home 244, Waterfield Road Bandra (W), Mumbai 400050
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PAN – AALPW0303K

Appellant

Respondent

Assessee by:	Shri Nitesh Joshi
Revenue by:	Ms. N. Hemalatha

Date of Hearing: 26.06.2018

Date of Pronouncement: 26.06.2018

ORDER

Per B.R. Baskaran, AM

These cross appeals are directed against the order dated 25.10.2017 passed by learned CIT(A) -33, Mumbai and they relate to the assessment year 2007-08. Both the parties are aggrieved by the decision rendered by learned CIT(A) on the addition made under Section 14A of the Income Tax Act (hereinafter "the Act").

2. We heard the parties and perused the record. This is second round of proceeding. In the original assessment proceeding, the AO had computed disallowance u/s 14A of the Act by applying the provisions of Rule 8D of

the I.T rules. Since the Hon'ble Bombay High Court has held in the case of Godrej & Boyce Mfg. Co. Ltd (328 ITR 81) that the provisions of Rule 8D shall apply prospectively from AY 2008-09, the matter of determination of disallowance u/s 14A was restored to the file of the AO by the ITAT. In the set aside proceedings, the AO made the very same disallowance of Rs.135.60 lakhs, however, without referring to the provisions of Rule 8D. In the appellate proceedings, the Ld CIT(A) restricted the disallowance to the amount of exempt income of Rs.39,28,114/- by following the decision rendered by Hon'ble Delhi High Court in the case of Joint Investments Ltd vs. CIT (ITA No.117/2015).

3. The revenue is aggrieved by the decision of Ld CIT(A) in granting partial relief to the assessee, while the assessee is aggrieved by the decision of Ld CIT(A) in partially sustaining the addition u/s 14A.

4. We shall first take up the appeal filed by the revenue. The exempt income received by the assessee during the year under consideration was Rs.39,28,114/- and we notice that the Ld CIT(A) has followed the decision rendered by Hon'ble Delhi High Court in the case of Joint Investments Ltd (supra). Since the Ld CIT(A) has followed the decision of Hon'ble Delhi High Court, we do not find merit in the appeal of the revenue.

5. We shall now take up the appeal filed by the assessee. The Ld A.R submitted that the assessee is engaged in trading of shares, derivatives etc. He submitted that the common expenses incurred by the assessee was Rs.8,19,504/-. He submitted that, if the above said expenditure is apportioned in the ratio of receipts of various income, the expenditure allocable to the exempt income works out to Rs.7,030/- only. However, on a perusal of the Profit and Loss account, we notice that the assessee has not considered certain expenses like Securities Transaction tax, Service tax, brokerage on loan, interest expenses etc. Hence we are unable to agree with the workings given by the assessee.

6. In the case of Godrej & Boyce Manufacturing Co. Ltd (supra), the Hon'ble Bombay High Court has held that the disallowance u/s 14A for the

assessment years prior to the AY 2008-09 should be computed on reasonable basis. In the instant case, the main objective of the assessee was to make gains in trading in shares in respect of shares held as stock in trade and accordingly it was submitted that the receipt of dividend income was incidental. We notice that the assessee has held certain shares as its investments also.

7. The Hon'ble Supreme Court has held in the case of Maxopp Investments Ltd (402 ITR 640) that the exemption claimed on dividend income would trigger the provisions of sec. 14A of the Act. It was also held that the objective to have controlling interest in making investments is also not relevant for computing disallowance u/s 14A of the Act. We notice that the assessee has taken certain grounds relating to strategic investments and shares held as stock in trade. The Ld A.R fairly conceded that those grounds go against the assessee in view of the decision rendered by Hon'ble Supreme Court in the case of Maxopp Investments Ltd (supra).

8. In the instant case, we notice that the assessee's capital is in negative, meaning thereby, the entire share trading activity has been carried out of loan funds only. Hence a portion of interest expenses should also be allocated to the exempt income, which constituted major portion of the total expenses. We have noticed that the assessee is having long term investments, trade investments and stock in trade of shares. The dividend earned on investments cannot be said to be incidental.

9. We notice that the total loan funds of the assessee stand at Rs.3369.29 lakhs and the value of investments stand at Rs.256.72 lakhs. We have noticed that the assessee is having negative capital and his entire activity has been financed by loan funds only. We notice that the assessee has incurred interest expenses of Rs.201.20 lakhs. Hence interest expenditure relating to investments which yielded dividend income is required to be disallowed. Hence, on a conspectus of the matter, we are of the view that the disallowance u/s 14A may be restricted to 30% of the dividend income and, in our view, the same would meet the requirements

of the provisions of sec. 14A of the Act. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/s 14A to 30% of the dividend income received by the assessee.

8. In the result, the appeal filed by the revenue is dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26th June, 2018.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai, Dated: 26th June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -33, Mumbai*
4. *The Pr. CIT - 23, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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