

**आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 1018/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Elegant Marbles & Grani Industries Ltd. C/o.SDBA & Co. Chartered Accountants, 601, 'A' Wing, Aurus Chambers, Behind Mahindra Towers, S.S. Amrutwar Marg, Worli, Mumbai-400 013	Vs.	Assistant Commissioner of Income Tax, Circle 6(2)(2), Mumbai
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
स्थायी लेखा सं./PAN No. AAACE1584C		

अपीलार्थी की ओर से / **Appellant by** : Anuj Kisnadwala, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri DG Pansari, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	31-07-2018
घोषणा की तारीख / <b>Date of pronouncement :</b>	03-08-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-12/ACIT-6(2)(2)/70/15-16 dated 22.11.2016. The



Assessment was framed by the Asst. Commissioner of Income Tax, Circle 6(2)(2), Mumbai (in short ACIT/ AO) for the assessment year 2011-12 order dated 27.03.2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) partly confirming the disallowance of expenses relatable to exempt income by the AO by invoking the provisions of section 14A of the Act read with Rule 8D(2) of the Income Tax Rules 1962, (hereinafter 'the Rules'). For this assessee has raised the following grounds: -

*"1.0 The order passed by the learned Commissioner of Income-tax (Appeals) - 12, Mumbai, partly confirming the assessment order passed u/s.143(3) of the Income-tax Act, both bad-in-law and bad-in-facts.*

*DISALLOWANCE U/S.14A*

*2.0 The learned Commissioner of Income-tax (Appeals) erred in law as well as in facts confirming the disallowance made by the assessing officer u/s.14A of the Income 1961 read with Rule 80(2) of the Income-tax Rules, 1962."*

3. Briefly stated facts are that the assessee is a closely held company engaged in the business of purchase, sale and manufacture of marble and granite slabs and also making investment in purchase and sale of shares, debentures and mutual funds. The assessee filed its return of income for the relevant AY 2012-13 declaring total income at ₹ 2,45,21,930/-. The assessment was completed by the AO under section 143(3) of the Act and assessed the total income at ₹ 3,40,87,317/-. The AO during the course of assessment proceedings noticed that the



assessee has earned exempt income to the tune of ₹ 1,52,33,868/- on the closing value of investments of ₹ 48,04,50,488/-. The assessee has earned total revenue of ₹ 20,83,79,691/- and the AO also noticed that the assessee has suo moto disallowed a sum of ₹ 3,41,235/-. The assessee during the course of assessment proceedings vide submissions dated 17.03.2015 filed working of disallowance made by assessee of expenses in relation to the exempt income at ₹ 3,46,625/- and claim the same which in accordance with rule 8D of the Rules. The AO has not accepted the contention of the assessee and by invoking the provisions of section 14A of the Act read with rule 8D(2) made the total disallowance at ₹ 24,06,966/-. The AO recomputed the disallowance i.e. expenditure directly relating to exempt income under rule 8D(2)(i) at ₹ 4714 and under Rule 8D(2)(iii) i.e. average value of investment at 0.5% amounting to ₹ 24,02,252/-. Aggrieved, assessee preferred the appeal before CIT(A), the CIT(A) confirmed the disallowance and partly allowed the claim of the assessee by directing the AO to verify and exclude the investments which does not given exempt income and include only investments which yield the exempt income and takes the value for the purpose of average value of investments for working of disallowance under Rule 8D(2)(iii). Aggrieved, now assessee is in second appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee filed complete working of expenditure for the purpose of computing the disallowance under section 14A of the Act and the relevant chart reads as under: -

Sr. No.	Particulars	A.Y. 2012-13 Amount (Rs)	A.Y. 2011-12 Amount (Rs.)
1	Exempt income	1,52,33,868	1,05,35,994
2.	Closing value of investments	48,04,50,488	43,55,17,985
3.	Total revenue	20,83,79,691	18,82,12,997
4.	Expenses relatable to exempt income	46,67,650	42,62,226



5	Suo-moto disallowance u/s 14A of the Act (Sr. No. 4/3 * 1)	3,41,235	2,38,596
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5. The learned Counsel for the assessee stated that assessee has computed the disallowance of expenses on scientific basis and the AO could not find any inconsistency or he could not find any fault in the computation of disallowance made by the assessee. Once he is not able to find any inconsistency or incorrectness in the disallowance computing by assessee suo motto, no further disallowance can be made in view of the fact that the AO was never satisfied that the disallowance is wrong or incorrect. The leaned Counsel for the assessee also relied on the decision of co-ordinate Bench of this Tribunal in assessee's own case for AY 2011-12 in ITA No. 4066/Mum/2016, wherein the Tribunal vide Para 4 has deleted the disallowance and restricted the disallowance to the extent of ₹ 2,61,727/- as computed by the assessee suo moto as under: -

*“4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee explained from the details of working of disallowance under section 14A of the act by taking the turnover from manufacturing and trading activity as well as sales for earning long term capital gains and other incomes like dividend, rent, etc. The learned Counsel for the assessee specifically drew our attention to the administrative expenses the nature of the same are given in schedule J of the balance sheet and also misc. expense for the purpose of Mumbai Bench office and Abu Unit, where manufacturing activities were carried out. The learned Counsel for the assessee stated that they have attributed the directors*



*remuneration of ₹ 36,00,000/- towards business expenses and out of which they have presumed some part of the salary might have been gone into exempt income. Further, the learned Counsel explained that some part of the miscellaneous expenses of ₹ 12,81,356/- can be attributed to the exempt income. Accordingly, the learned Counsel stated that he has fairly disclose the expenses at ₹ 2,61,727/- to the expenses. We find from the above facts that the Revenue could not establish any nexus with the expenses incurred by assessee and before us also the assessee has properly explained the relation of exempt income and expense incurred. We find that the assessee has rightly disallowed to the extent of ₹ 2,61,727/- relatable to exempt income and we restrict to that extent only. We delete the disallowance confirmed by CIT(A) and allow the appeal of the assessee. "*

6. We have gone through the facts in entirety and also gone through the assessment order. We find that the pre-condition for resorting the provision of section 14A read with Rule 8D(2) of the Rules is that the AO must be satisfied that the computation for disallowance made by assessee is incorrect in respect to expenses relatable to exempt income. Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC), held as under: -

*“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory*



*of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the AO.”*

7. In view of the above facts and respectfully following the Supreme Court, we are of the view that in the present case, the AO has not recorded any satisfaction as to why the disallowance made by assessee, suo motto, is incorrect. Even otherwise, the issue is covered by Tribunal's decision in assessee's own case for immediately preceding year. Accordingly, we delete the disallowance and allow the appeal of the assessee. However, the disallowance will be restricted to the extent of ₹ 3,41,235. This issue of assessee's appeal is allowed.

**8. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 03-08-2018.

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 03-08-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai