

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1420/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Camelot Enterprises Pvt. Ltd. 64-H/2, Bansial Building, 1 st Floor JSS Road, Opera House, Mumbai-400 004	Vs.	The Asst. Commissioner of Income Tax, Central Circle- 6(4), 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AABCC6796M		

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri SK Bepari, DR

सुनवाई की तारीख / Date of hearing:	25.10.2018
घोषणा की तारीख / Date of pronouncement :	25.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-54, Mumbai [in short CIT(A)], in appeal No. CIT(A)-41/ACCC-6(4)/IT-18/15-16 vide dated 29.12.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, circle 6(4) Mumbai (in short 'ITO/ AO') for the A.Y. 2012-13 vide dated



16.03.2015 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) confirming the action of the AO in disallowing expenses relatable to exempt income under section 14A of the Act. For this assessee has raised the following grounds No. 1 & 2: -

"1. On the facts and in law, the learned Commissioner of Income-tax (Appeals) [hereinafter referred to as "Ld. CIT(A)"] had erred in not deleting the disallowance of ₹ 4,85,329/- u/s.14A made by the learned Assessing officer. Under the facts and circumstances of the matter, the Ld. CIT(A) ought to have deleted disallowance of Rs. 4,85,329/-.

2. On facts and in law, the Id. CIT(A) had erred in including the value of shares held as stock-in-trade while computing disallowance as per Rule 8D read with section 14A of the I.T. Act. Under the facts and circumstances of the mater, the Ld. CIT(A) ought to have excluded the shares held as stock-in-trade from the purview of Rule 8D read with section.14A."

3. Brief facts are that the AO noted in his assessment order that there is dividend income and other exempt income also but no expenditure has been attributed to the earning of this income. But AO has not quantified which are exempt income and how much. The AO simply applied the provisions of section 14A read with Rule 8D(2)(iii) of the Income Tax



Rules, (hereinafter the 'Rules') and disallowed a sum of ₹ 4,85,329/- i.e. 0.5% of average value of investment being administrative expenses. The CIT(A) also confirmed the action of the AO. Aggrieved, assessee is in second appeal before Tribunal.

4. I have gone through the assessment order and noted that the AO has simply applied the provisions of section 14A r.w.r. 8D(2)(iii) of the Rules, without going into the details of expenses or without recording any satisfaction how the provisions are to be attracted. As this is mandated that the satisfaction is pre-condition for invoking section 14A r.w.r. 8D(2) of the Rules and 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.”

5. In view of the above, I am of the view that in the absence of any satisfaction the disallowance made by AO relating to exempt income



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under Rule 8D(2)(iii) of administrative expenses cannot be sustained. Accordingly, I delete the same and allow the appeal of the assessee.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 25-10-2018.

आदेश की घोषणा खुले मे दिनांक 25-10-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 25-10-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI