IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3008/Del/2018
AY: 2014-15

DCIT Circle 4(1) Gurgaon	**vs**.	Zaroopa Foods Pvt. Ltd. Regus-I-Tech Business Centre Pvt. Ltd., 9th Floor, Spaze i-Tech Park, A-1, Tower, Sohna Road, Sector 49, Gurgaon, Haryana **AAACZ5673P**
(Appellant)		**(Respondent)**

Revenue by : Sh. Surender Pal, Sr. DR
Assessee by : None

Date of Hearing : 06/11/2018

Date of Pronouncement: 14/11/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue against order dated 27/02/18 passed by Ld. CIT (A)-2, Gurgaon, for assessment year 2014-15 on following grounds of appeal:

1. *"Ld. CIT(A) has erred on fact and in law in deleting the disallowance of Rs. 2,08,97,302/- made by the Assessing Officer u/s 14A of the Income Tax Act, 1961.*
2. *Ld. CIT(A) has erred on fact and in law in ignoring CBDT Circular No. 5 of 2014 dated 11.02.2014 clarifying that disallowance under Rule 8D read with Section 14A of the Income Tax Act is to be made even where taxpayer in a particular has not earned any exempt income.*

3. *That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing of appeal."*

2. Brief facts of the case are as under:

Assessee filed its return of income on 29/09/14 declaring total income of Rs.2,07,06,576/-. The return was processed under section 143 (1) of the Act and was picked up for scrutiny. Notices under section 143 (2) of the Act was issued and notice under section 142 (1) of the Act along with questionnaire was served upon assessee. Subsequently, in response to statutory notices, representatives of assessee appeared before the Ld.AO and filed various details as called for.

2.1 Ld.AO observed that assessee operates as a holding company for investment made in downstream companies operating in quick service and casual dining restaurants category. It was observed that for the year under consideration, assessee added back sum of Rs.19,743/-as disallowance under section 14A read with Rule 8D.

2.2 It was observed that assessee is holding company of Vrinda Foods and Hospitality Pvt. Ltd., and TMA Hospitality Services Pvt. Ltd., it was submitted by assessee that assessee made investment in cumulative convertible preference shares of these companies. It was submitted that objective of assessee was to make investment in other companies. Ld.AO, computed disallowance under section 14A read with Rule 8D at Rs.2,21,73,295/-.

3. Aggrieved by order of Ld.AO, assessee preferred appeal before the Ld.CIT (A) who deleted the addition by following decision of *Hon'ble Punjab and Haryana High Court* in the case of *CIT vs. Lakhani Marketing* reported in *(2014) 49 Taxmann.com 257.*

4. Aggrieved by order of Ld.CIT (A) Revenue is in appeal before us.

5. None has appeared on behalf of assessee before us today. Considering smallness of issue involved, it is deemed to be fit and proper not to keep the appeal pending. Accordingly, we are deciding the issue in hand, ex parte assessee.

6. The only issue involved in present appeal is in respect of disallowance made by Ld.AO under section 14 A read with Rule 8D. Admittedly, assessee has invested in its subsidiaries.

7. Ld.Sr. DR submitted that the said issues stands covered with decision of *Hon'ble Supreme Court* in case of *Maxxop Investments vs CIT* reported in *[2018] 91 taxmann.com 154 (SC).*

8. We have perused the order passed by Ld. AO. Hon'ble Supreme Court in *Maxxop Investments vs CIT (supra) decided as under:*

> ***"34.*** *Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that*

such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share & Stock Brokers (P.) Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines there from.

> *"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..*
>
> *The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."*

35. *The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid*

> *reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assessees to have controlling interest in the investee companies have to fail and are, therefore, dismissed."*

8.1 Thus, respectfully following the same we reversed observations of Ld.CIT (A) and hold that, for purposes of computing disallowance under section 14A under Rule 8D, even investments made by assessee in its subsidiary company would be considered.

9. We have perused computation provided by Ld.AO for disallowance under section 14A read with Rule 8D. In our opinion, no disallowance could be made under Rule 8D (i) and (ii) in present facts of case, as these are not is incurred in relation to investments made by assessee. We, therefore, set aside this issue to Ld. AO and direct restrict disallowance under section 14A read with Rule 8D (iii) only.

Accordingly grounds raised by revenue stand partly allowed.

In the result appeal filed by Revenue stands partly allowed.

Order pronounced in the open court on 14/11/2018

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(BEENA A PILLAI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dt. 14th November,2018

*Kavita Arora

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	