आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I T.A. No. 1243/Chny/2018**
निर्धारण वर्ष/**Assessment Year:2013-14**

The Assistant Commissioner of Income Tax, Non Corporate Circle 20(1), Chennai.	Vs.	M/s. Sun TV Network Limited, No. 73, MRC Nagar Main Road, MRC Nagar, Sindhur Towers, Chennai – 28. **[PAN:AADCS4885K]**
(**Appellant**)		(**Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri S. Barath, CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri N. Devanathan, Advocate
सुनवाई की तारीख/ Date of hearing	:	17.10.2018
घोषणा की तारीख /Date of Pronouncement	:	20.11.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 14, Chennai dated 30.11.2017 relevant to the assessment year 2013-14.

2. The first issue arises for consideration is addition made by the Assessing Officer towards purchase of movies, programme production expenses, amortization of film and Broadcast rights, consumables and Media expenses at ₹.400,28,71,930/-.

2.1 We have heard the submissions of Shri S. Bharath, CIT, ld. Departmental Representative and Shri N. Devanathan ld. Authorised Representative of assessee and gone through the orders of authorities below. It is brought to notice of the Bench that an identical issue came before this Tribunal for assessment year 2012-13 in assessee's own case filed by the Revenue in I.T.A. No.1309/Mds/2017 dated 14.08.2017. This Tribunal after considering the earlier decision in assessee's own case in I.T.A. Nos.1515 to 1520/Mds/2013 for assessment years 2004-05 to 2009-10 vide order dated 31.10.2013 and in I.T.A. Nos.1340 & 1341/Mds/2015 dated 19.02.2016 found that the similar expenditure incurred by the assessee has to be allowed as a revenue expenditure. The ld. CIT(A), in fact, allowed the claim of assessee by placing reliance on the order of Tribunal for the earlier assessment years 2004-05 to 2009-10 vide order dated 31.10.2013. Therefore, this Tribunal do not find any reason to interfere with the order of ld. CIT(A) on this issue. Accordingly, the order of ld. CIT(A) is confirmed in the departmental appeal.

3. The second issue arises for consideration is deferred revenue expenditure.

3.1 We have heard both sides, perused the relevant material available on record and gone through the orders of authorities below. This issue also

subject matter of discussion before this Tribunal in assessee's own case for assessment years 2004-05 to 2009-10 vide order dated 31.10.2013 in I.T.A. Nos.1515 to 1520/Mds./2013 and in I.T.A. No.1309/Mds/2017 dated 14.08.2017 for the assessment year 2012-13. This Tribunal specifically found that the monies received are shown as deferred revenue in the year of receipt and are offered as income in the year when programme is aired. The ld. CIT(A), in fact, followed the order of Tribunal in assessee's own case vide order dated 31.10.2013. Therefore, this Tribunal do not find any reason to interfere with the order of ld. CIT(A). Accordingly, the order of ld. CIT(A) is confirmed in the departmental appeal.

4. The last issue arises for consideration is disallowance made by the ld. Assessing Officer under section 14A read with Rule 8D towards expenditure relating to the exempt income and investments. After considering the submissions of the assessee, the Assessing Officer determined the disallowance of ₹.67,37,913/- under Rule 8D(2)(ii) and ₹.2,36,34,417/- under Rule 8D(2)(iii) totalling to ₹.3,03,72,330/-. After considering the submissions of the assessee that the investments in subsidiary company should be excluded for the puirpose of computation of disallowance under section 14A r.w. Rule 8D by relying on the decision of the Tribunal in the case of DCIT v. EIH Associated Hotels Ltd. in I.T.A. Nos. 1919 & 1920/Mds/2015 dated 01.07.2016, the ld. CIT(A) directed the Assessing

Officer to restrict the disallowance of ₹.2,36,34,417/- made under Rule 8D(2)(iii).

4.1 We have heard the rival contentions, perused the materials available on record and gone through the orders of authorities below. We have considered the submissions of the ld. Counsel that the dominant intention in making investments in the subsidiary company is not to earn the dividend income, but, to control the business of the subsidiary company and therefore, the said investments should be excluded for the purpose of computation of disallowance under section 14A r.w. Rule 8D. Similar issue was subject matter in appeal before the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT in Civil Appeal Nos. 104-109 of 2015 dated 12.02.2018, wherein, it was observed and held as under:

> *"31) We have given our thoughtful consideration to the argument of counsel for the parties on both sides, in the light of various judgments which have been cited before us, some of which have already been taken note of above.*
>
> *32) In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.*
>
> *33) There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the*

one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assessees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

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 and 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 therefrom. http://www.itatonline.org 35 "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.. xxx xxx xxx The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14 A."

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.

4.2 From the above judgement of the Hon'ble Supreme Court, it is amply clear that any investments made in the subsidiary, which is not for the purpose of earning dividend and may be for the purpose of having controlling interest therein, shall attract the provisions of section 14A read with Rule 8D. Accordingly, we set aside the order of the ld. CIT(A) on this issue and sustain the disallowance made under section 14A r.w. Rule 8D(2)(iii).

5. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced on the 20th November, 2018 at Chennai.

Sd/-	Sd/-
(ABRAHAM P. GEORGE)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 20.11.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.