



IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.298/LKW/2017  
Assessment Year: 2009-10

Dy. CIT Range 6 Lucknow	v.	M/s U.P. Power Corporation Ltd. Shakti Bhavan 14, Ashok Marg Lucknow
		TAN/PAN:AAACU5088M
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Madhuk, CIT (DR)		
Respondent by:	Shri Sandeep Kumar, FCA		
Date of hearing:	08	02	2019
Date of pronouncement:	22	02	2019

**ORDER**

PER A. D. JAIN, V.P.:

This is Department's appeal for assessment year 2009-10, contending that the Id. CIT(A) has erred in deleting the penalty of Rs.106,00,00,000/- under section 271(1)(c) of the Income-tax Act, 1961, ignoring that the assessee had furnished inaccurate particulars of income by not offering for tax the disallowance under section 14A of the Act, although assessee had invested for shares of DISCOMS from the interest bearing borrowed funds.

2. The assessee filed return of income showing loss of Rs.15,30,83,55,024/-. The Assessing Officer completed assessment at a loss of Rs.9,07,21,05,540/-, giving effect to the Tribunal's order dated 16/6/2015, wherein, the Tribunal had, inter alia, confirmed the Id. CIT(A)'s order upholding the addition of Rs.3,11,81,24,842/- made

under section 14A of the Act. The penalty in question, amounting to Rs.106,00,00,000/-, was imposed vide order dated 31/12/2015, holding that the assessee had concealed its income amounting to Rs.3,11,81,24,842/-. The Id. CIT(A) has cancelled the said penalty by virtue of the impugned order.

3. The Id. A.R. of the assessee has placed on record (APB: 56-70) the copy of the Tribunal's order dated 13/6/2018, whereby, the issue of earning of exempt income by the assessee and disallowance under section 14A of the Act has been remitted to the Assessing Officer to record a finding as to whether the assessee was having any exempt income or not, as also to examine the applicability of section 14A of the Act and the manner of disallowance, if any called for, in the light of the judgment of Hon'ble Supreme Court in the case of "MAXOP Investment Ltd. vs. CIT", 402 ITR 640 (SC). The Tribunal has held (relevant portion at APB: 69-70) as follows:-

*"4.2 In the present case before us, though Learned A. R. has tried to demonstrate that the assessee did not earn any exempt income therefore, the assessee was not liable for disallowance u/s 14A but in our opinion the Assessing Officer should make a finding of fact as to whether the assessee was having any exempt income or not. The Assessing Officer should also ^examine the applicability of section 14A and the manner of disallowance, if any, in accordance with the judgment of Hon'ble Supreme Court in the case of Maxopp-Investment Ltd. (supra). In view of the above, the appeal of the Revenue a's.yvell as of the assessee are allowed for statistical purposes.*

*5. For the assessment year 2009-10, the issue and facts are similar. However, in this year the learned CIT(A) did not allow part relief to the assessee and sustained the whole addition which the Assessing Officer had made u/s 14A of the Act. Following our decision for assessment year 2008-09, this appeal is also set aside to the Assessing Officer for examination of applicability of provisions of section 14A and the manner of disallowance, if any."*

4. Since the addition, forming the basis of the penalty under consideration, has been set aside by the Tribunal on remand to the Assessing Officer, as above, obviously, the penalty levied no longer survives. We hold that, for the above reasons, it has rightly been deleted by the Id. CIT(A).

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22/02/2019.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED: 22<sup>nd</sup> February, 2019

JJ:1102

Copy forwarded to:

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

By order

Assistant Registrar