

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.2799/Del./2015, A.Y. 2010-11**

D.C.I.T Central Circle -20, New Delhi (APPELLANT)	Vs.	Sh. Ashwani Khurana 5, Green Avenue, Vasant Kunj, New Delhi (RESPONDENT)
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ASSESSEE BY : Sh. Ashok Khurana, Adv.  
REVENUE BY : Shri Nedhi Srivastava, CIT- DR

Date of Hearing : 24.01.2019  
Date of Order : 26.02.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant Dy. Commissioner of Income Tax, New Delhi (hereinafter referred to as 'the revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 27/02/2015 passed by Ld. Commissioner of Income Tax(Appeals), New Delhi qua the Assessment Year 2010-11 on the grounds inter alia that :

- "1. The order of the Ld. CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in allowing the disallowance of Rs. 23,28,214/- disallowed by the A.O. u/s 14A read with Rule*

8D.

3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,76,17,625/- made by the A.O. on account of capital gain.*

4. *The appellant craves leave to add, amend any / all the grounds of appeal before or during the course of the hearing of the appeal."*

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : AO noticed that the assessee has shown dividend income of Rs. 21,90,904/- under the head 'other receipts' on the credit side of P & L Account and claimed the same as exempt u/s 10(34) of the Act. However, the AO disagreeing with the claim of the assessee as the exemption u/s 10(34) of the Act proceeded to invoke provisions contained u/s 14A read with Rule 8D of the Act and proceeded to make disallowance of Rs. 23,28,214/- and made addition thereof to the total income of the assessee. AO also made addition of Rs. 2,76,17,625/- on account of capital gain qua the property sold bearing no. 56 Golf Links, New Delhi by declining the contention raised by the assessee that forfeited amount against a property has to be taxed as a capital gain.

3. Assessed carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the addition by allowing the appeal filed by the assessee.

4. We have heard the Id. DR for the revenue and gone through the order passed by the lower revenue authority.

5. **Ground no. 1**

Ground no. 1 is general in nature, hence, need no specific findings.

6. **Ground no. 2**

Undisputedly the assessee has earned a dividend income of Rs. 21,90,904/- during the year under assessment. It is also not in dispute that there is no expenses claimed by assessee in the profit and loss account except audit fee. However, AO by invoking the provisions contained u/s 14A read with Rule 8D (ii) made addition of Rs. 23,28,214/- as against the dividend income of Rs. 21,90,904/-.

7. Ld. DR for the revenue challenging the impugned order passed by Ld. CIT(A) relied assessment order passed by the AO by relying on the decision rendered by Hon'ble Supreme Court of India in case of **MAXOPP INVESTMENT LTD. vs. COMMISSIONER OF INCOME TAX, NEW DELHI (2018) 402 ITR 640(SC)**. However, on the other hand the Ld. AR for the assessee contended that AO proceeded to invoke the provisions contained u/s 14A read with Rule 8D without recording his dissatisfaction as to the working of computation of income given by the assessee that no expenses have been incurred by the assessee to earn the exempt income and also relied upon **MAXOPP INVESTMENT LTD. vs. COMMISSIONER OF INCOME TAX, NEW DELHI (supra)**.

8. The Ld. CIT(A) after perusing the P & L account has proceeded to hold that all the expenditure debited to P & L Account have been suo moto added back by the assessee in the computation of income and has also examined Computation of Income (COI) which explains assessee had added back audit fee of Rs. 20,00,000/-, municipal fee of Rs. 62,707/- and donation of Rs. 14,72,900/- and nothing else was there to be treated as expenditure.

8. Hon'ble Delhi High Court in judgment cited as **MAXOPP INVESTMENT LTD.** held that in case the assessing officer is not satisfied with the correctness of the claim of the assessee he shall have to reject the claim and record the reason for doing so by turning following findings :-

*“Section 14A even prior to the introduction of subsections (2) and (3) would require the Assessing Officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the Assessing Officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of .sub-section (2) of section 14A . Prior to that, the assessee was free to adopt any reasonable and acceptable method. So, even for the prerule 80 period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the Act. Even where the assessee claims that no expenditure has been incurred in' relation to income which does not form part of the total income, the Assessing Officer will have to verify the correctness of such claim. In case, the Assessing Officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the Assessing Officer is to accept the claim of the assessee in so far as the quantum of disallowance under section 14A is concerned. In such eventuality, the Assessing Officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the Assessing Officer is not, on the basis of the objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the Assessing Officer will have to determine the amount of expenditure incurred in relation to income which does not form part of the total income under the Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.”*

9. So, in this case AO without recording his dissatisfaction / reasons as to his satisfaction about the correctness of the claim of the assessee mechanically proceeded to invoke the provisions contained u/s 14A with

Rule 8D which is not permissible under law. Moreover the Ld. CIT(A) has deleted the addition on the basis of facts that expenditures debited to P & L Account by the assessee have been suo moto added back by the assessee in the computation of income. So, we find no scope to interfere into the findings returned by Ld. CIT(A). Consequently ground no. 2 is determined against the revenue.

10. **Ground no. 3**

Undisputedly assessee had entered into an agreement to sell qua his property bearing no. 56 Golf Links, New Delhi with one Sanjay Pashi after accepting the earnest money of Rs. 4,62,50,000/-, which was subsequently forfeited as the prospective buyer Sanjay Pashi has failed to perform his part of the contract. It is also not in dispute that the property in question was ultimately sold by assessee to M/s. HAP apparel pvt. Ltd. for Rs. 21.75 crore, (assessee's share 50%). It is also not in dispute that the assessee has already offered capital gain on the sale proceed of Rs. 21.75 crore.

11. However assessee has deducted Rs. 4,62,50,000/- the amount of sale proceeds forfeited from the cost of acquisition of the property in question u/s 51 of the Act and treated the excess of forfeited amount and cost of assets i.e. 2,76,17,652/- as capital receipts.

12. The Ld. CIT(A) has decided the issue by discussing section 51 of the Act and has also reached the conclusion that u/s 56(2) a new sub-section (IX) has been inserted with effect from 01.04.2015 to treat the forfeited sum as income from other sources, but it is not applicable to the year under assessment which is A.Y 2010-11.

13. A co-ordinate bench of Tribunal in case cited as **Randhir Singh Kadan vs. Department of Income Tax** decided the identical issue by

treating the earnest money received and forfeited by the assessee in respect of any negotiation for transfer of capital assets to be deducted from the cost of assets. Since in A.Y. 10-11 there was no provision under the Act for treating the forfeiture of earnest money received during the negotiation of a capital assets as income from other sources, the Ld. CIT(A) has rightly deleted the addition. The issue in controversy is also covered by decision rendered by Co-ordinate bench of Tribunal in case of Vijay Singh (supra). Consequently ground no. 3 is determined against the revenue.

14. In view of what has been discussed above, so, finding no illegality or perversity in the impugned order passed by Ld. CIT(A), the present appeal filed by the revenue is hereby dismissed.

**Order pronounced in open court on this 26<sup>th</sup> February, 2019.**

**Sd/-  
(B.R.R.KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Dated : 26/02/ 2019

**\*BR\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-XXVI, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI

Date of dictation	18.02.2019
Date on which the typed draft is placed before the dictating Member	18.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	26.02.2019
Date on which the fair order comes back to the Sr. PS/PS	26.02.2019
Date on which the final order is uploaded on the website of ITAT	26.02.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	