

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 2031/DEL/2018 (A.Y 2013-14)

Altus Learning Pvt. Ltd. B 7/122A, Safdarjung Enclave, New Delhi AADCC5355Q (APPELLANT)	Vs	ACIT Circle-2(1) Room No. 392, C. R. Building, New Delhi (RESPONDENT)
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Appellant by	Sh. D. C. Agarwal, Adv
Respondent by	Sh. Raghunath, Sr. DR

Date of Hearing	14.03.2019
Date of Pronouncement	26.03.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 11/01/2018 passed by CIT(A)-1, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

“Grounds of appeal

(Being item no. 12 of Form No. 36 in the case of M/s Altus Learning Pvt. Ltd. v. ACIT, Circle 2(1), New Delhi).

1. *On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the addition of Rs. 47,04,192/-.*

2. On the facts and circumstances of the case and in law, while confirming the addition of Rs. 47,04,192/- made by Id. AO u/s 14A, Ld. CIT(A) erred in -

(i) holding that- "AO was not satisfied with the claim of the appellant with regard to the expenditure incurred to earn the exempt income and thereby rejected the claim" whereas no such satisfaction was recorded by him in the assessment order or anywhere.

(ii) holding that- "The AO has shown the relationship between exempt income and expenditure incurred" whereas no such relationship was shown by the Ld. AO and which could not have been shown as no interest expenditure was related to investment made to earn exempt income.

(iii) Holding that- "further, the interest expenses were not attributable to any particular income and therefore were to be determined as per Rule 8D", whereas none of interest bearing funds were invested in earning exempt income.

(iv) Holding that- "the Assessing Officer has acted in a fair manner and applied the provisions of the Act to the issue to work out the disallowance"

(v) Observing that- "The AO stated that the appellant was having consolidated accounts for its income earning activities. No separate set of amounts were maintained for activities, income from which would not form part of the total income" whereas no such observation of findings are there in the assessment order framed by the AO.

(vi) Observing that- "Further the AO stated that the business and investments were interlinked as the appellant was having common infrastructure and common personnel" whereas no such observation of findings are there in the assessment order framed by the AO.

(vii) Confirming the addition by disallowance interest expenditure even though a finding is given by him that "most of the interest bearing funds were not utilized for investment. They were rather in the nature of term loans."

(viii) Confirming the addition without considering the arguments made by

the appellant and reproduced in the impugned appellant order.

(ix) *Confirming the addition ignoring, in particular, the binding decisions of Hon'ble Apex Court in CIT(A) Vs. Walfort Share & Stock broker Pvt. Ltd. 326 ITR 1, and of Jurisdictional High Court of Delhi in H. T. Media Ltd. Vs. Pr. CIT(A)[2017] 85 taxmann.com 113 (Delhi).*

(x) *Confirming the addition by ignoring the decisions of other High Court and Tribunal, relied by the appellant to the effect that (i) if Ld. A.O has not recorded satisfaction about the claim of the expenditure having regard to the accounts of the appellant, Rule 8D cannot be invoked and (ii) interest expenditure cannot be disallowed u/s 14A, if interest bearing funds were not invested in earning exempt income."*

3. The only issue contested in the present appeal is addition of Rs. 47,04,192/- made by the Assessing Officer u/s 14A read with Rule 8D of the Income Tax Rules 1962. During the Financial Year 2012-13 i.e. Assessment Year 2013-14, the company earned the exempt income u/s 10(34) of the Income Tax Act, 1961 amounting to Rs. 1,38,80,773/-. The investment in the units of mutual funds (wrongly mentioned by A.O as shares) as on 31/3/2013 is of Rs.18,32,14,106/- which was NIL as on 31/3/2012. Since, the assessee Company earned the exempt income and there is investment in the units of mutual funds, income from which is exempt, the Assessing Officer vide order sheet entry dated 6/9/2016 asked the assessee as to why the provisions of Section 14A of the Act should not be invoked and the disallowance should not be made accordingly. In response to the said show cause notice, the assessee company filed its detailed reply vide submission dated 20th September, 2016. The assessee company brought to the notice of the Assessing Officer that during the Financial Year 2012-13, the assessee company made the current investments from the proceeds received from the issue of share capital with premium. The assessee company also filed funds flow statement showing the details like date, particulars, capital inflow and capital out flow for current investment. Accordingly, the assessee company submitted to the Assessing

Officer that the investments made by the assessee company are not out of borrowed funds on which the assessee company has to pay the interest. Further, the assessee company explained to the Assessing Officer that no amount of term loan has been utilized for the purpose of investment in the shares. The Assessing Officer did not accept the explanation of the assessee company and observed that since investment made by the assessee company from the borrowed fund as to the exempt income, the provisions of Section 14A are attracted and accordingly made the disallowance of Rs. 47,04,192/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee's case is fully covered by the decision of Hon'ble Apex Court in case of Maxopp Investment Ltd. Vs. CIT(A) (2018) 91 taxmann.com 154 (S.C). As well as the decision of the Apex Court in case of CIT(A) Vs. Walfort Shares Stock Broker Pvt. Ltd. 326 ITR 1. The Ld. AR submitted that no satisfaction for invoking Section 14A was drawn by the Assessing Officer as required under Section 14A. The Ld. AR further submitted that the assessee during the year under consideration issued preference shares with premium and collected Rs. 20 crores. The said amount was invested into mutual funds amounting to Rs. 18,27,14,116/-. It had also borrowed funds from the financial institutions for various other business purposes on which it incurred total interest expenditure of Rs.1,26,97,172/-. The term loan and other loans were spend for the purposes of business which they borrowed and not invested into mutual funds. Thus, there is direct nexus of money collected from preference shares and money invested into mutual funds. The Assessing Officer disallowed proportionate interest at Rs. 47, 40,192/- out of total interest was paid by invoking Rule 8D read with Section 14A, while doing so no satisfaction was recorded either in the assessment order or there is no specific satisfaction recorded separately by the Assessing Officer. Thus, the Ld. AR submitted that the appeal of the assessee be allowed.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused the material available on record. The Hon'ble Apex Court in case of Maxopp Investment Ltd. (Supra) 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 A.O need to record satisfaction that having regard to the kind of the assessee, suo moto disallowance u/s 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the A.O was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction of 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 A.O.”

The Assessing Officer has clearly noted that no term loan money has been invested for investment purpose. Besides there was no satisfaction recorded as to how the strategic business investment has been done by the assessee and the invocation of provisions of Section 14A read with Rule 8D are attracted. Therefore, in light of the Apex Court decision, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 26th MARCH, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 26/03/2019
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	14.03.2019
Date on which the typed draft is placed before the dictating Member	18.03.2019
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	
Date on which the fair order comes back to the Sr. PS/PS	26.03.2019
Date on which the final order is uploaded on the website of ITAT	26.03.2019
Date on which the file goes to the Bench Clerk	26.03.2019
Date on which the file goes to the Head Clerk	