

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI
BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 2537/Mum/2018 (Assessment Year 2011-12)

DCIT, Circle-3(2)(1), R.No. 608, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s I.B. Holdings Ltd., M-62, 63, First Floor, Connaught Place, New Delhi-110001. PAN: AABCF1242P
Appellant		Respondent

Appellant by : Shri Pramod Nikalje (DR)
Respondent by : Shri Chetan A. Karia (AR)
Date of Hearing : 23.04.2019
Date of Pronouncement : 23 .04.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue under section 253 of Income-tax Act ('Act') is directed against the order of Id. Commissioner of Income-tax (Appeals)-8, Mumbai [hereinafter referred as Id. CIT(A)] dated 15.02.2018 for Assessment Year 2011-12. The revenue has raised the following grounds of appeal:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.5,27,18,701/- u/s 14A r.w.r. 8D without appreciating the fact that the amount of disallowance u/s 14A of the I. T. Act, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble Bombay High Court in the case of M/s Godrej & Boyce Manufacturing Co. Ltd.?

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowance of Rs.5,25,34,581/- u/s

14A r.w.r. 8D(2)(ii) without appreciating the fact that the assessee had failed to make any disallowance under the said section and thereby not adhering to the decision of the Hon'ble Bombay High Court of Bombay in the case of Godrej & Boyce Manufacturing Co. Ltd.?

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowance of Rs.1,84,120/- u/s 14A r.w.r. 8D(2)(iii) without appreciating the fact that the assessee had failed to make any disallowance under the said section and thereby not adhering to the decision of the Hon'ble Bombay High Court of Bombay in the case of Godrej & Boyce Manufacturing Co. Ltd.?

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in not considering the fact that the amount disallowance u/s 14A to the amount of Rs. 5,27,18,701/- made by the AO was on the basis of CBDT Circular No. 5 of 2014 dated 11.02.2014.

5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the amount of disallowance u/s 14A to the amount of Rs. 5,27,18,701/- holding that disallowance u/s 14A cannot be made in respect of investment made in subsidiary and related companies whereas in the recent judgment of the Apex Court in the caes of M/s Maxopp Investment Ltd. vs. CiT in Civil Appeal No. 104-109 of 2015 dated 12.02.2018, it has been held that Section 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade?

6. The appellant prays that for this and other reasons it is submitted that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

2. Perusal of grounds of appeal shows that though the revenue has raised multiple ground of appeal, however, in sum and substance, the sole ground of appeal relates to deleting the disallowance under section 14A r.w. Rule 8D.

3. The Id. AR of the assessee at the outset of hearings submits that the Assessing Officer made disallowance under section 14A r.w.Rule 8D of Rs. 5,27,18,701/- despite the fact that no exempt income was earned by the assessee during the relevant period. The Id. CIT(A) deleted the entire disallowance by following the decision of Hon'ble Delhi High Court in Cheminvest Ltd. (378 ITR 33), therefore the grounds of appeal raised by the revenue are covered in favour of the assessee and against the revenue.
4. On the other hand, the Id. Departmental Representative (DR) for the revenue strongly relied upon the decision of Assessing Officer.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that during the assessment, the Assessing Officer noted that the assessee has made huge investment in equity share/securities of Rs. 1374 Crore which is capable of generating income which does not form part of total income. The Assessing Officer further noted that the assessee has incurred huge interest expenditure on borrowed fund as well as administrative expenses. The Assessing Officer issued show-cause notice to the assessee as to why the provision of section 14A r.w.Rule 8D should not be invoked for making disallowance under section 14A. The assessee filed its reply. The assessee in its reply has clearly contended that the assessee has not earned any tax free income on investment made in

share and securities during the year. Therefore, the provision of section 14A will not attract. The assessee also relied on various decisions. The contention of assessee was not accepted by Assessing Officer. The Assessing Officer invoked the provision of Rule 8D by referring the CBDT Circular No. 14/2018 dated 22.11.2001 and Circular No. 8/2002 dated 27.08.2002 and Circular No. 5/2014 dated 11.02.2014. The Assessing Officer made the disallowance of interest expenditure of Rs. 5,25,34,581/- and administrative expenses @ .5% of average value of investment of Rs. 1,84,120/- thereby making the total disallowance of Rs. 5,27,18,701/-. The Id. CIT(A) deleted the entire disallowance holding that Assessing Officer has not given any cogent or specific reason for dissatisfaction with the assessee's contention that no dividend income was received during the year and hence, disallowance under section 14A was not warranted. The Id. CIT(A) followed the decision of Hon'ble Delhi High Court in Cheminvest Ltd. (supra) and deleted the entire disallowance.

6. No contrary facts or decision is brought to our notice to take other view; therefore, respectfully following the decision of Hon'ble Delhi High Court in Cheminvest Ltd. (supra), we hold that the grounds of appeal raised by revenue are squarely covered against the revenue and in favour of assessee. Therefore, the grounds of appeal raised by revenue are dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 23/04/2019.

Sd/-

**G.S. PANNU
VICE-PRESIDENT**

Mumbai, Date: 23.04.2019

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**