

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai**

**Before Shri S. Rifaur Rahman, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.5599/Mum/2018  
(Assessment Year: 2014-15)**

Gajanan Enterprises, 4<sup>th</sup> Floor, Rustom  
Building, 29, Veer Nariman Road, Fort,  
Mumbai 400 001

Vs. ACIT, Circle-17(1),  
Mumbai.

PAN – AAKFG7595A

**(Appellant)**

**(Respondent)**

Appellant by:	Shri Prakash K.Jotwani, A.R
Respondent by:	Shri V.Vinod Kumar, Id. Sr.DR
Date of Hearing:	28.11.2019
Date of Pronouncement:	11.12.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-56, Mumbai, dated 29.08.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 15.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us :-

- “1. On the facts and circumstances of the case and in law, the learned CIT(Appeals) has erred in confirming the addition made of Rs. 5,36,662/- which is on account of disallowance u/s 14A.
2. The learned CIT(Appeals) ought to have appreciated the fact, that the assessee's main business objective is trading in shares and the shares are held as Stock in Trade and not as Investments and gains/losses are declared as Business Income. The Learned CIT(Appeals) ought to have appreciated the fact that Rule 8D applies only when shares are held as

Investments and not when they are held as stock in trade therefore provisions of section 14A are not attracted.

3. The Ld. CIT(Appeals) ought to have appreciated the fact that dividend earned in only incidental to Business Income and the shares were purchased not to earn dividend but for profit arising on sale hence there's no expenditure for earning dividend. Since, there is no proximate relationship between expenditure and exempt income, disallowance u/s 14A is not sustainable.
4. Your appellant crave leave to add to, alter, amend, modify or delete any grounds of appeal before the same is disposed off finally.”

2. Briefly stated, the assessee firm which is engaged in the business of trading in shares and securities had filed its return of income for A.Y. 2013-14 on 11.09.2014, declaring its total income at Rs. 89,30,430/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had during the year under consideration earned exempt dividend income of Rs. 55,95,500/-. Observing, that the assessee had not attributed any expenditure for earning of the aforesaid exempt income, the A.O called upon the assessee to explain as to why the disallowance of expenses incurred in relation to earning of exempt income may not be worked out under Sec. 14A of the Act. In response, it was submitted by the assessee that as it was into trading of shares and securities, therefore, the provisions of Sec. 14A were not applicable in its case. However, without prejudice to its aforesaid claim, the assessee worked out the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) at Rs. 5,36,662/-. The A.O was not inclined to accept the claim of the assessee that no disallowance under Sec. 14A was called for in its case. Accordingly, the A.O worked out the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) at Rs. 5,36,662/- and assessed the income of the assessee firm at Rs. 94,67,090/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). Observing, that the issue as to whether dividend income earned on shares held as stock-in-trade by the assessee was to be considered for the purpose of computing the disallowance under Sec.14A was no more *res integra* pursuant to the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT, New Delhi (2018) 402 ITR 640(SC), the CIT(A) was of the

view that no infirmity did emerge from the working of the disallowance under Sec. 14A r.w. Rule 8D by the A.O. Accordingly, the CIT(A) upheld the assessment order and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. In support of his contention that no disallowance under Sec. 14A r.w. Rule 8D was called for in a case where the assessee had purchased shares as stock-in-trade for the purpose of trading, and was only incidentally in receipt of dividend income on the same, therein relied on the order of the ITAT, Delhi Bench 'E' in the case of Nice Bombay Transport (P) Ltd. Vs. ACIT(OSD), New Delhi (2019) 175 ITD 684 (Del). Also, reliance was placed upon the order of ITAT "F" Bench, Mumbai in the case M/s Vora Financial Services (P) Ltd. Vs. ACIT-2(3)(1), Mumbai (ITA No.532/Mum/2018, dated 29.06.2018. The Ld. A.R drawing support from the latter order submitted, that the Tribunal taking cognizance of the fact that the assessee before them was in receipt of major portion of dividend income from shares of a single scrip which was held as stock-in-trade, had concluded, that as it would not be appropriate to apply the provisions of Rule 8D(2)(iii), therefore, restricted the disallowance to the extent of 5% of the dividend income earned by the assessee. Further, it was the contention of the Ld. A.R that the disallowance under Rule 8D(2)(iii) could be made only where the exempt income yielding assets were held by the assessee as investments. Alternatively, it was submitted by the Ld. A.R, that in the case of the present assessee the inventories of the exempt income yielding shares was reduced to nil as on 31.03.2014. On the basis of his aforesaid contentions, it was the claim of Ld. A.R that the disallowance made by the A.O under Sec. 14A r.w. Rule 8D(2)(iii) may be vacated.

6. Per contra, the Learned Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was averred by the Ld. D.R, that pursuant to the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi [Civil Appeal Nos. 104-109 of 2015, dated 12.02.2018] the issue that disallowance under Sec. 14A r.w. Rule 8D was also to be worked out in respect of shares held as stock-in-trade was no more res integra and stands settled as on date. Accordingly, it was submitted by the Ld. D.R that as the appeal of the assessee was devoid of any merit, therefore, the same may be dismissed.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial

pronouncements relied upon by them. Admittedly, the exempt income yielding shares were held by the assessee as 'stock-in-trade'. Although, the opening stock of inventories as on 01.04.2013 was reflected at Rs. 21,46,64,955/-, however, the same as on 31.03.2014 stood reduced to nil. In sum and substance, the stock of shares which were held by the assessee as on 01.04.2013 were liquidated during the year under consideration, and no part of the same was reflected in its 'closing stock' as on 31.03.2014. However, in our considered view, the aforesaid factual position would principally have no bearing on the computing of the disallowance under Sec. 14A r.w. Rule 8D. We find that it is the claim of the Ld. A.R that as the exempt dividend income yielding shares were held by the assessee company as 'stock-in-trade', therefore, no disallowance under Sec. 14A r.w. Rule 8D was called for in its case. In our considered view, the aforesaid contention of the Ld. A.R is absolutely misconceived and cannot be accepted. On a perusal of judgment of the **Hon'ble Supreme Court** in the case of **Maxopp Investment Ltd. Vs. CIT, New Delhi**, we find, that the Hon'ble Apex Court had disapproved the dominant purpose test that was pressed into service by the assessee for the purpose of interpreting the scope and gamut of Sec. 14A of the Act. Infact, the Hon'ble Court had subscribed to the theory of the apportionment which was made available by the legislature by inserting Sec. 14A vide the Finance (Amendment) Act, 2001 with retrospective affect from 01.04.1962. In the aforesaid judgment, the Hon'ble Apex Court had inter alia observed that where shares are held by an assessee as stock-in-trade, the earning of exempt dividend income on the same would trigger the applicability of Sec. 14A of the Act. Accordingly, the Hon'ble Apex Court had 'set aside' the dominant purpose test which was relied upon by the High Court. For the sake of clarity, the observations of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) are reproduced as under :

"39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However by virtue of Section 10(34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in **Walfort Share and Stock Brokers P Ltd.** case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned."

Accordingly, in terms of our aforesaid observations, we are of the considered view that no infirmity emerges from the order the CIT(A) who after relying on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi (2018) 402 ITR 640(SC), had rightly concluded that the shares which were held by the assessee as stock-in-trade were to be considered for the purpose of computing the disallowance under Sec. 14A of the Act. As regards the reliance placed by the Ld. A.R on the order of a coordinate bench of the ITAT, Delhi in the case of Nice Bombay Transport (P) Ltd. Vs. ACIT(OSD), New Delhi (2019) 175 ITD 684 (Del), the same in our considered view, not being consistent with the view taken by the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra), would thus not be binding as a judicial precedent. Insofar the reliance placed by the Ld. A.R on the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Alpha G. Corp. Development Ltd. (ITA No. 599/2018, dated 25.04.2019), the same being distinguishable on facts would not assist the case of the assessee before us. Also, the order of the ITAT "F" Bench, Mumbai in the case of M/s Vora Financial Services P. Ltd. Vs. ACIT-2(3)(1), Mumbai, wherein an adhoc disallowance had been preferred as against that worked out under Sec. 14A r.w. Rule 8D(2), having been rendered without considering the aforesaid judgment of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra) would also not be binding. We thus finding no infirmity in the order of the CIT(A) who had rightly sustained the disallowance computed by the A.O under Sec. 14A r.w. Rule 8D(2)(iii), therein uphold the same.

8. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 11.12.2019

Sd/-  
(S. Rifaur Rahman)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 11.12.2019

\*\*PP, SPS

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**