

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.5038/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-3(3)(1) Room No.609, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Saurashtra Fuels Pvt. Ltd. 93-C, Mittal Towers, Nariman Point, Mumbai- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS7271G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri V. Vinod Kumar (Sr. AR)	
Assessee by:	Shri B. V. Jhaveri	

सुनवाई की तारीख / Date of Hearing: 04/12/2019

घोषणा की तारीख /Date of Pronouncement: 09/12/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 18.06.2018 passed by the Commissioner of Income Tax (Appeals) -8, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

*"(1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the disallowance u/s 14A read with Rule 8D stating that Assesses own funds were more than investment made relying on Hon'ble Bombay High Court's decision in the case of HDFC Bank Ltd (366 ITR 505)(Bom) and also in the case of CIT vs*



*Reliance Utilities and Power Ltd (313 ITR 340)(Bom) whereas the Hon'ble Supreme Court in para 42 of their decision in the case of M/s Maxopp Investment Ltd vs. CIT in Civil Appeal No. 104-109 of 2015 dated 12-022018, have upheld the principle of apportionment in cases where the assessee has mixed funds and interest has been paid and when the judgment by Hon'ble Bombay High Court in the case of MIs Godrej & Boyce Mfg. Co. Ltd, it was held that disallowance has to be in accordance with provisions of Section 14A read with Rule SD from AY 2008-09 onwards ?*

*(ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the disallowance u/s 14A read with Rule SD without appreciating the Hon'ble Apex Court in the case of Maxopp Investment Ltd vs. CIT in Appeal No. 104-109 of 2015 dated 1202-20 18 has been held that Section 14A applies irrespective of whether the shares are held as strategic investment to gain control or as stock-in-trade?*

*(iii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the disallowance u/s 14A read with Rule 8D holding that no exempt income earned at all in contrary to CBDT Circular No. 5 of 2014 dated 11-02-2014 which clarified that the Rule SD read with Section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income?*

*(iv) The Applicant craves leave to amend, alter, delete or add grounds which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 28.09.2012 declaring total loss income to the tune of Rs.26,22,07,852/- for the A.Y.2012-13. Thereafter, the assessee filed the revised return of income on 13.02.2013 revising the loss for the assessment year 2012-13 at Rs.62,84,71,852/-. The assessee further revised the loss assessing to the tune of Rs.26,13,30,352/-. The assessee further filed the revised e-return of income on 22.05.2013 declaring total loss to the tune of Rs.26,22,07,852/-. The assessee also declared the book loss u/s 115JB of the Act at Rs. Nil. The return was processed u/s 143(1) of the Act. The case



of the assessee was reopened and notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee failed to reconcile an amount of Rs.7,232/- the difference between the return of income and AIR details, therefore, the same was added to the income of the assessee. The AO also disallowed an amount of Rs.1,94,02,396/- u/s 14A r.w. Rule 8D of the Rules and the income of the assessee was assessed at loss in sum of Rs.33,84,15,672/-. The book profit was assessed at Rs. Nil. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

### **ISSUE NO. 1**

**4.** We have heard the argument advanced by the Ld. Representative of the parties and perused the record. All the issues are in connection with the allowance of the claim u/s 14A r.w. Rule 8D of the Rules. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“3.1.3 These grounds relate to disallowance of Rs.1,94,02,396/- over and above suo moto disallowance made by the appellant u/s 14A. The Assessing Officer has discussed this issue at para 4 of the order. This issue had also come up before Hon’ble ITAT Mumbai in the appellant’s appeal for A.Y.2011-12 wherein Hon’ble Tribunal vide order ITA No.1659/M/2015 dated 18.11.2016 decided this issue in favour of the appellant. The relevant extract of the order for A.Y.2011-12 is reproduced here for ready reference: -*

*In this regard. AO disallowed the sum of Rs.1.62 Crs (rounded off), which is deleted by the CIT (A) vide his finding given in the relevant paras at pages 6 and 7 of the impugned order. Considering the importance of the said para for the sake of completeness of this order, the same is extracted as under-*



*"I find that in the case of appellant-company, paid up capital and reserves as at 31.3.2011 were Rs. 65.88 Crs. As against it, the total investment in shares of subsidiary companies as at 31.3.2011 was only Rs. 29.39 Crs. Thus, appellant company had sufficient own funds to make investment in subsidiary companies. in CIT vs. HDFC Bank Ltd (2014) 366 ITR 5.5 (Bom.), it has been held in the context of disallowance u/s 14A that if the assesses capital, reserves, surplus and current account deposits are higher than the cost of tax free investments, it would have to be presumed that the said investments made by the assessee would be out of interest free funds. Also it has been held in the case of CIT vs. Reliance Utilities and Power Ltd 313 ITR 340 (Bom) that if there are funds available both interest free and interest bearing, then a presumption would arise that the investments made are out of interest free funds generated or available with the company and if the interest free funds are sufficient to meet the investment then there is no need for disallowing any interest. In view of the above, the addition of Rs. 1,62,69.769/- made by the AO is deleted."*

*2. From the above, it is evident that the C/T (A) held that the assessee's own fund is much higher than that of the borrowed funds and the investments stands covered by the said own funds of the assessee. In that case, the ratio laid down by the Hon'ble jurisdictional High Court in the case of Reliance Utilities and Power Ltd (supra) is applicable to the instance case. Therefore. the Cal (A)'s decision in following he said judgment of the Bombay High Court (supra) while granting relief to the assessee is fair and reasonable and it does not call for any interference. We order accordingly. Thus, grounds raised by the Revenue are dismissed.*

*3.1.4 Thus, it is found that the issue stands covered in favour of the appellant both CIT (A) as well as ITAT order in its own case. It is also found that the facts of the assessee are same as earlier. Two things particularly deserve attention here. Firstly, own funds are more than the investments made. Secondly, there is no exempt income at also. interest expenditure is on term loan taken. Appellant has also got huge amount of interest-free unsecured loans. Taking into account all the aspects, the Disallowances made by the AO u/s 14A in this case is not justified and the same is directed to be deleted."*

**5.** On appraisal of the above mentioned finding, we find that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble ITAT in the assessee's own case bearing ITA. No.1659/M/2015



for the A.Y. 2011-12 dated 18.11.2016. The facts are quite similar to the facts of the case relied upon the CIT(A). Firstly, the assessee's own fund is more than investment made. Secondly, the assessee was not having any exempt income in the year under consideration. No disallowance is required. Since the matter of controversy has been adjudicated by CIT(A) on the basis of the decision of Hon'ble ITAT in the assessee's own case(supra) and there is no factually difference of facts, therefore, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with this at this appellate stage. Accordingly, all the issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 09/12/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :09/12/2019

*Vijay Pal Singh/Sr. PS*

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 5038/M/2018  
A.Y.2012-13

**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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