

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4470/Mum/2018
(निर्धारण वर्ष / Assessment Years : 2014-15)

The DCIT – 9(3)(2) 418, Aayakar Bhavan, 4 th Floor, M.K Marg, Mumbai.	बनाम/ Vs.	Future Market Networks Ltd., Knowledge House, Off Jogeswari Vikhroli Link Rd. Shyam Nagar Jogeswari East, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCF2006M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Sushil Kumar Poddar, CIT(DR)
प्रत्यर्थी की ओर से/Respondent by :	Miss. Dinkle Haria (AR)

सुनवाई की तारीख / Date of Hearing	09/12/2019
घोषणा की तारीख/Date of Pronouncement	10 /01/2020

आदेश / ORDER

PER SHRI S RIFAUR RAHMAN- AM:

This is an appeal preferred by the revenue against the order of the Ld. CIT(A)-16, Mumbai, dated 19.04.2018.

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2. Brief facts of the case are that the assessee filed its return of income on 29.01.2014, declaring total loss at Rs. 67,01,83,597/- and declared book profit loss at Rs. 131,28,81,567/-. The return was processed u/s 143(1) of the Act. The notices u/s 143(2) and 142(1) of the act were issued and duly on the assessee. In response to the said notices the assessee filed relevant information as called for. A.O disallowed the disallowance u/s 14A to the extent of Rs. 13,15,71,740/-, even though assessee has not earned any exempt income during this year and A.O has reduced the disallowance to the extent of Rs. 24,15,984/-, as the assessee itself disallowed in its computation of income. Accordingly, he disallowed net amount of Rs. 12,91,55,756/- by relying on the CBDT circular.

3. Aggrieved with the above order the assessee preferred an appeal before the CIT(A) and the CIT(A) considered the submissions of the assessee that assessee has not earned any exempt income during this year by relying on the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd., reported in [2009] 121 ITD 318 (Delhi SB) and deleted the disallowance made u/s 14A of the Act.

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4. Aggrieved with the above order the revenue is in appeal before us by raising the following grounds of appeal:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance u/s 14A holding that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made.

2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the decision of Hon'ble Apex Court in the case of Maxopp investment P Ltd. Vs. CIT, New Delhi wherein it was held that the dominant purpose for which investment into shares is made by the assessee may not be relevant as Sec. 14A of the Act applies irrespective of whether shares are held to gain control or as stock entry and where shares are held as stock in trade main purpose is to trade in those shares and earn profits there from and in process certain dividend is also earned which is tax exempt u/s 10(34) of the Act”.

5. Considering the rival submissions and material placed on record, we noticed from the record that the assessee has not earned any dividend income during this year the disallowance u/s 14A of the Act are warranted only when exempt income is earned / declared by the assessee. This fact was acknowledged by the A.O and Ld. CIT(A) in their respective orders. Respectfully following the decision in Cheminvest Ltd., (Supra), we are inclined to accept the

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findings of the CIT(A) and ground No. 1 raised by the revenue is dismissed.

5.1 With regard to the ground of appeal No. 2, the application of decision in Maxopp Investment [2012] 347 ITR 272 (Del), the Coordinate Bench of this Tribunal in assessee's own case for the A.Y 2013-14 has held as under:-

“9. On a thorough and careful reading of the aforesaid judgment of the Hon'ble Supreme Court we are unable to locate any observation / ratio laid down by the Hon'ble Supreme Court to indicate that even in the absence of exempt income earned by the assessee in the relevant assessment year provisions of section 14A of the Act can be invoked. The issue before the Hon'ble Supreme Court was completely different as to whether the disallowance under section 14A of the Act can be made in respect of shares / mutual fund held by the assessee as stock-in-trade or strategic investment in subsidiary company would not attract the provisions of section 14A of the Act. Therefore, it cannot be said that the Hon'ble Supreme Court in the aforesaid decision has laid down any ratio holding that even in the absence of any exempt income earned in the assessment year provision of section 14A of the Act would still be attracted. It is well settled proposition of law that what is binding is the ratio of a decision and not what can be inferred from the judgment by implication. Even, observations made by the Court as a obiter dicta do not constitute binding precedent. Considered in the aforesaid perspective, the contention of the learned Departmental Representative that the decision of the Hon'ble Supreme Court

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lays down the ratio that even in the absence of exempt income provision of section 14A of the Act is applicable, is unacceptable.....”

5.3 Respectfully following the above findings, we are inclined to dismiss the ground of appeal No. 2 raised by the revenue.

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

This Order pronounced in Open Court on 10 /01/2020

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dated 10/01/2020
KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai