

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

**BEFORE SHRI R.C. SHARMA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA No. 4922/MUM/2018 (A.Y. 2013-14)

M/s. Krypton Investments Consultancy Pvt. Ltd., 13, Motilal Marwadi Chawl, M.G. Road Ghatokopar(E), Mumbai – 400 077 PAN: AADCK9142R	v.	ACIT – 14(2)(1) Room No. 432, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

ITA No. 5209/MUM/2018 (A.Y. 2013-14)

ACIT – 14(2)(1) Room No. 432, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Krypton Investments Consultancy Pvt. Ltd., 13, Motilal Marwadi Chawl, M.G. Road Ghatokopar(E), Mumbai – 400 077 PAN: AADCK9142R
(Appellant)		(Respondent)

Assessee by	:	Shri Neelkanth Khandelwal
Department by	:	Shri K.C. Selvamani
Date of Hearing	:	17.12.2019
Date of Pronouncement	:	26.02.2020

ORDER**PER C.N. PRASAD (JM)**

1. These two cross appeals are filed by the assessee and revenue against order of the Learned Commissioner of Income Tax (Appeals)- 22, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 22.06.2018 for the A.Y.2013-14.

2. Assessee has raised the following grounds in its appeal: -

"1. The order dated 22/06/2018 bearing No. CIT[A]-22/IT-10415/2016-17 by the CIT[A]-22, Mumbai is arbitrary, against natural justice, unlawful, against the provisions of Income Tax Act, 1961, invalid and therefore liable to be quashed.

2. On facts and circumstances of the case and in law, the Hon. C.I.T.(A) has erred in confirming partly disallowance made under section 14A at Rs.76,30,193/- out of total disallowance made by Assessing Officer of Rs.2,62,76,403/-.

3. The appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal."

3. Revenue has raised the following grounds in its appeal: -

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the disallowance u/s 14A of the Income Tax Act 1961 read with Rule 8D of the Income Tax Rules 1962, to the extent of exempt income of Rs. 76,30,193/- without considering the facts that there is no provision in Law to restrict the disallowance to the extent of exempt income and also that as per Circular No.5 of 2014 issued by CBDT, the disallowance can be computed u/s 14A r.w.r. 8D, even if there is no exempt income earned."

2. "The appellant prays that the order of CIT(A) on the above ground be reversed and that of the Assessing Officer be restored."

3. *"The appellant craves leave to amend or alter any grounds which may be necessary."*

4. Briefly stated the facts are that, the Assessing Officer in the course of the assessment proceedings on a perusal of the details filed by the assessee noticed that assessee made investments during the year under consideration. Assessee was required to furnish the details of expenditure incurred in relation to exempt income and also required to explain as to why disallowance u/s. 14A r.w. Rule 8D should not be made. In response to the said query assessee vide letter dated 25.01.2016 submitted that assessee earned dividend income which was incidental to its business of purchase and sale of shares which remained unsold by the company. It was submitted that no expenditure was incurred by the assessee company in earning dividend income so notional expenditure cannot be disallowed u/s. 14A of the Act. However, it was brought to the notice of the Assessing Officer that the assessee made suo moto disallowance of ₹.3,75,862/- u/s. 14A of the Act in its return of income towards expenditure attributable for earning exempt income. The Assessing Officer not convinced by the submissions of the assessee invoked provisions of section 14A r.w. Rule 8D of I.T. Rules observing that it is a settled position of law that the expenditure in relation to exempt income to be disallowed u/s. 14A of the Act even though no exempt

income was earned during the year. Accordingly, invoking the provisions of Rule 8D of I.T. Rules Assessing Officer quantified disallowance at ₹.2,66,52,275/- and since the assessee has already made suomoto disallowance of ₹.3,75,872/- he restricted the disallowance to ₹.2,62,76,403/-.

5. On appeal the Ld.CIT(A) restricted the disallowance to the exempt income of ₹.76,30,193/- earned by the assessee during the Assessment Year under consideration.

6. Learned Counsel for the assessee submitted that there was no satisfaction recorded by the Assessing Officer on the suomoto disallowance made by the assessee. The Assessing Officer has not recorded any satisfaction as to why the suomoto disallowance made by the assessee is wrong or baseless. Referring to Page No. 6 and 14 of the Paper Book filed by the assessee the Ld. Counsel for the assessee submits that there are no investments in the case of the assessee but all are stock in trade reflected as inventories.

7. Ld. DR vehemently supported the orders of the authorities below.

8. We have heard the rival submissions, perused the orders of the authorities below. On a careful perusal of the Assessment Order we find

that the Assessing Officer without recording any satisfaction as to why the suomoto disallowance made by the assessee is incorrect invoked the provisions of section 14A r.w. Rule 8D and made disallowance. In the case of Maxopp Investment Ltd. v. CIT [402 ITR 640] the Hon'ble Supreme Court 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 AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to 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 AO.”

9. In the case on hand, the Assessing Officer before invoking the provisions of section 14A r.w. Rule 8D not recorded his satisfaction as to why the suomoto disallowance is not correct and why he has not accepted. The ratio of the Hon'ble Supreme Court decision squarely applies to the facts of the assessee case. Thus, respectfully following the said decision as the Assessing Officer did not record any satisfaction as to why the suomoto disallowance made by the assessee is not correct, invoking provisions of section 14A of the Act is not proper and justified. Thus, we direct the Assessing Officer to delete the disallowance made u/s. 14A of the Act. As we have held that there is no satisfaction recorded

for invoking provisions of section 14A of the Act and delete the disallowance, the grounds of the revenue are rejected.

10. In the result, appeal of the assessee is allowed and revenue's appeal is dismissed.

Order pronounced in the open court on the 26th February, 2020

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER
Mumbai / Dated 26/02/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum