

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 4601 & 4574/MUM/2018
(A.Y: 2010-11 & 2011-12)**

ACIT – 4(2)(1) Room No. 642, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s Pegasus Stock & Shares Pvt. Ltd., 320, Yashwant Smruthi, 12 th Road Khar, Mumbai – 400 052 PAN: AADCP3708N
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Kumar Padmapani Bora**

Date of Hearing : **03.02.2020**
Date of Pronouncement : **03.02.2020**

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals) –9, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 09.05.2018 for the Assessment Years 2010-11 & 2011-12 in restricting the disallowance u/s. 14A of the Act to the extent of exempt income earned by the assessee.

2. Briefly stated the facts are that, the assessee is engaged in business of Trading in shares, Securities & Derivatives filed revised return of income on 31.03.2012 declaring Nil Income and loss of ₹.13,98,08,984/- for A.Y. 2010-11 and 2011-12 respectively. During the course of assessment proceedings Assessing Officer noticed that Assessee had earned exempt income of ₹.12,41,100/- and ₹.10,25,141/- for the A.Y.2010-11 & 2011-12 respectively and no expenditure is shown to have incurred for earning exempt income. Assessing Officer required the assessee to explain as to why disallowance u/s. 14A r.w. Rule 8D should not be made. In reply Assessee contended that no expenditure has been incurred to earn the exempt income. However, the Assessing Officer computed the disallowance at ₹.1,67,85,812/- and ₹.4,87,07,285/- applying Rule 8D r.w. section 14A for A.Y. 2010-11 and A.Y. 2011-12 respectively. On appeal Ld.CIT(A) restricted the disallowance to the exempt income earned by the assessee. Against this order revenue is in appeal before us.

3. In spite of issue of notice, none appeared on behalf of assessee nor any adjournment was sought. Therefore, we proceed to dispose off this appeal on hearing the Ld.DR.

4. Ld. DR vehemently supported the orders of the Assessing Officer.

5. We have heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) following the decision of Hon'ble Apex Court in the case of Maxopp Investment Ltd., v. CIT (Civil Appeal Nos. 104-109 of 2015) dated 12.02.2018 restricted the disallowance to the extent of exempt income earned by the assessee. While holding so the Ld.CIT(A) observed as under: -

"3.2. I have perused the facts of the case and appellants submissions carefully.

.....

b] Whether disallowance should be restricted to exempt income:

I find that the Hon'ble Supreme Court in para 40 has held that, "Whether dividend is earned or not becomes immaterial". The Hon'ble Supreme Court in para 40 has further observed as under:

"We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable.

In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the IT A T."

I understand from the above that for the purpose of applying Rule 8D, though the earning of dividend on each investment is not necessary, still the disallowance computed under Rule 8D need to be restricted to total amount of exempt income earned by assessee during the year. Hence, appellant's this contention is tenable.

3.3. *In view of above, the disallowance made u/s 14A r.w.r. 8D of Rs. 1,67,85,812/- is restricted to the exempt dividend income of Rs.12,41,100/-, and hence, the appellant gets balance relief of Rs.1,55,44,712/-. Therefore, the ground of appeal is partly allowed.”*

6. As could be seen from the above observations of the Ld.CIT(A), he restricted the disallowance u/s. 14A of the Act to the exempt income earned by the assessee following the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd v. CIT (supra).

7. The Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT [378 ITR 33] held that if disallowance exceeds the exempt income the same should be restricted to the exempt income only. The Hon'ble Bombay High Court in in the case of Pr.CIT v. M/s. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016 dated 13.10.2010 rejected the appeal filed by the Revenue holding that there is no substantial question of law, in upholding the view of the Tribunal that provisions of section 14A would not apply when there is no exempt income received or receivable during the relevant previous year. This bench is consistently holding that, the disallowance u/s. 14A of the Act shall not exceed exempt income and shall be restricted to the exempt income earned by the assessee. Thus, in view of the above, we find that Ld.CIT(A) has rightly restricted the disallowance u/s.14A of the Act only to the exempt income earned during the year. As the decision of the Ld.CIT(A) is in tune with

the consistent view of this Tribunal we do not find any infirmity in the order passed by the Ld.CIT(A). This ground of the revenue is dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on the 03rd February, 2020

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai / Dated 03/02/2020
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