

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
[Before Hon’ble Shri J.Sudhakar Reddy, AM and Hon’ble Shri A. T. Varkey, JM

**ITA No. 767/Kol/2019**  
Assessment Year: 2014-15

|  |     |   |
|--|-----|---|
| Anushreya Investments Pvt. Ltd.<br>PAN: AACCA3658B | Vs. | Income Tax Officer, Ward 3(2),<br>Kolkata |
| Appellant  |     | Respondent                                |

|                           |                                      |
|---------------------------|--------------------------------------|
| Date of Hearing (Virtual) | 24-09.2020                           |
| Date of Pronouncement     | 30 .09.2020                          |
| For the Appellant         | Shri Manish Tiwari, FCA, Ld.AR       |
| For the Respondent        | Shri Jayanta Khanra, JCIT, Ld. Sr.DR |

**ORDER**

**Shri A. T. Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A),10, Kolkata dated 25-01-2019 for the assessment year 2014-15.

2. Ground nos. 1 & 5 are general in nature. The same does not require any adjudication and, therefore, the same (ground nos. 1 & 5 of assessee’s appeal) are dismissed.

3. Ground nos. 2 & 3 reads as under:-

*2. That on the facts and the circumstances of the case, Ld. C.I.T.(A)-10, Kolkata has failed to consider proportionate disallowance u/s 14A of interest by comparing dividend income with total earnings of assessee and has also erred in not following decision of ITAT in assessee’s own case (in ITA No. 1126/Kol/2017) for AY 2012-13 dated 13.02.2019 on this apportionment issue.*

*3. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in not restricting the disallowance to Rs. 1,78,628/- as against Rs. 8,77,680/- since dividend income constituted only 2.13% of total earnings.*

3. At the outset, Shri Manish Tiwari, FCA, Learned Authorised Representative ( in short, the Ld. AR) for the assessee drew our attention to the fact that the issue of

disallowance on proportionate manner u/s. 14A of the Income-tax Act, 1961 ( in short, hereinafter referred to as the ‘Act’) read with rule 8D of the Income-tax Rules, 1962 (in short, hereinafter referred to as the ‘Rules’) has been considered by this Tribunal in assessee’s own case (ITA No. 1126/Kol/2017 for the AY 2012-13, order dated 13-02-2019), wherein the Tribunal has adjudicated the issue by holding as under:-

*“2. The assessee’s sole substantive ground seeks to reverse bot the lower authorities action making sec. 14 r.w.s Rule 8D disallowance of Rs. 49,24,682/- comprising of demat charges, proportionate interest and administrative expenditure of Rs. 1,43,005/-, Rs. 43,53,951/- & Rs. 4,27,726/-; respectively. Learned counsel’s first argument during the course of hearing is that both the lower authorities have erred in law as well as on facts in applying the above disallowance provision in case of shares held as stock-in-law. We find no merit in assessee’s instant argument as hon’ble apex court’s recent decision in Maxopp Investment Ltd vs. CIT (2018) 402 ITR 640 (SC) has settled the law that sec. 14A r.w.s Rule 8D disallowance applies even in an instance of shares held as stock-in-trade. The assessee fails in its former argument therefore.*

*3. Next comes equally significant aspect of computation of the impugned disallowance in case of share held as stock-in-trade. This Tribunal’s co-ordinate bench’s decision in Maruti Traders & Investors vs. ACIT in ITA No. 846/Kol/2017 dated on 28.11.2018 holds that the impugned disallowance has to be computed in case of shares held as stock-in-trade in the following manner:-*

*"Maruti Traders & Investors vs. ACIT-31, in I.T.A. No. 846/Kol/2017, I.T.A. No. 6371Kol/2018. In this the Ld ITAT held as follows :-*

*'2.3 We have heard the rival submissions. At the outset, we find from the audited accounts of the assessee, that the shares were held as stock in trade by the assessee and not as investments. Hence the computation mechanism provided in Rule 8D of the Rules cannot be applicable. We find that the Id AO though had not mentioned that the disallowance has been made in accordance with third limb of Rule 8D(2) of the Rules explicitly in is order, however, restored to take the computation mechanism provided therein at 0.5% of average value of investments. We hold that since Rule 8D of the Rules contemplates consideration of average value of investments only and not as stock in trade, the same cannot be adopted in the facts of the instant case, Now it is well settled by the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 (SC) that the disallowance u/s. 14A of the Act is to be made even if the shares are held as stock in trade. Since Rule 8D cannot be adopted herein, the disallowance should be made based on the accounts of the assessee.*

*2.3.1 We find that the Hon'ble Supreme Court in the case of cited supra*

*in para 39 of the order had also observed that even though the dividend has been earned as an incidental activity in respect of shares held a stock in trade, it triggers the applicability of section 14A of the Act ad depending upon the facts of each case, the expenditure incurred in acquiring those shares and maintaining those shares would have to be apportioned between taxable and exempt income. the Id AR placed reliance on the decision of the co-ordinate bench of this Tribunal in the ease of DCIT vs. S.G. Investments & Industries Ltd reported in 89 ITD 44 (Kol) dated 29.5.2003 wherein the Id Assessing Officer determined the sum of Rs. 19,14,940/- out of total interest paid of Rs.3,69,36,638/- as interest relatable to earning of exempted dividend by working out the percentage of dividend vis a vis total turnover during the year. The dividend earned in that case was Rs. 41,38,924/- which worked out to 5.2% of total earnings and accordingly proportionate interest debited in profit and loss account at the same percentage was disallowed u/s. 14A of the Act in that case. This action of the ld. AO was upheld by this tribunal. The Id AR before us stated that the name of S.G Investments & Industries Ltd got changed to ISG Traders Ltd. We find that this Tribunal decision dated 29.5.2003 had been upheld by the Hon'ble jurisdictional High Court in the case of ISG Traders Lt vs. CIT in ITA No. 264 of 2003 dated 22.9.2011.Hence by respectfully following the said decision, we hold that the expenditure to be disallowed u/s. 14A of the Act is to be worked out in the similar fashion."*

*4. Both the learned representatives are fair in enough at this stage that the Assessing Officer needs to finalize the consequential disallowance computation as per law. We therefore restore this computation issue back O the Assessing Officer to be finalized after affording adequate opportunity of hearing to the assessee.*

4. Since there is no change in facts or law on the issue in the present appeal, respectfully following the above said Tribunal order in assessee's own case (supra) for the AY 2012-13, we set aside the impugned order of the Ld. CIT(A) and remand the matter back to the Assessing Officer to finalize the consequential disallowance as directed by this Tribunal vide order dated 13-02-2019 in assessee's own case (supra) and in accordance to law. These ground nos. 2 & 3 raised by the assessee are allowed for statistical purpose.

5.Coming to ground no. 4, which reads as under:-

*4. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming AO's calculation that commission income u/s 194H as per 26AS was Rs.*

*9,51,039/- and consequently, the addition of Rs. 1,20,515/- in excess of correct commission of Rs. 8,30,524/- is erroneous, meaningless and unsustainable.*

6. Brief facts of the case are that the Assessing Officer on perusal of form 26AS noted that the assessee has received commission income of Rs. 9,51,039/-. He further noted that the assessee has shown its commission income of Rs. 3,30,524/- in its accounts. According to the AO, though the AR of the assessee was asked to explain the difference ie to reconcile, he failed to do so. Therefore, the difference in amount of Rs. 1,20,515/- (Rs. 9,51,039 – Rs. 8,30,524) was added by the AO to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

7. According to the Ld. AR, Shri Manish Tiwari, FCA, the assessee has earned commission income of Rs. 8,30,525/- on which TDS was duly deducted u/s. 194H of the Act and interest earned of Rs.1,92,880/- on which TDS u/s. 194A of the Act was deducted. Thus, the Ld. AR contended before us that there was no mis-match of the commission income as shown by the assessee during the assessment year (hereinafter the 'A.Y) under consideration. According to him, the AO has erred in considering the interest income as commission income earned during the AY under consideration and made the said addition erroneously. According to him, the reconciliation of income as per books of accounts vis-à-vis Form 26AS is placed at page-18 of the paper book. According to him this reconciliation could be able to explain/reconcile the mis-match, if any, when Form 26AS is considered. According to the Ld. AR since the AO has made the addition because assessee was not able to reconcile the difference and the AO did not get the benefit of reconciliation kept at page-18 of paper book, the matter may be remitted back to the AO for fresh consideration/adjudication. Per Contra, Ld. DR prays that no further opportunity may be given to the assessee.

8. Having heard both the parties and after perusal of the records, we are not repeating the aforesaid facts and submissions again for the sake of brevity. We taking note of reconciliation of income placed at page-18 of the paper book, find that the AO was not able to peruse the same and so had made the addition. Therefore, we are of the opinion

that the AO should verify the reconciliation as submitted by the assessee in respect of mis-match of income shown by the assessee. Therefore, we set aside the impugned order of the Ld. CIT(A) on this issue and remand the issue back to the AO for adjudicating the issue afresh and to pass a fresh order as per law, after giving the assessee adequate opportunity of hearing. The assessee is directed to file necessary documents/evidences, if any, to reconcile the mis-match as found by the AO. This ground of assessee is allowed for statistical purpose.

9. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 30 September 2020.

Sd/-  
( J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 30 September 2020

\*\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant /Assessee: M/s. Anushreya Investments P.Ltd 18 British India St, 1<sup>st</sup> Fl., Kol-69.
2. Respondent /Department: The I.T.O. W-3(2), Aaykar Bhavan, P-7 Chowringhee Sq., Kol-69.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar