

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

**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1562/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

JT. CIT(OSD), CC-7(1) R. No. 676B 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Rare Enterprises 151 Nariman Bhavan Nariman Point, Mumbai- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFR8176J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Dihashis (DR)
Assessee by:	Shri S. C. Tiwari

सुनवाई की तारीख / Date of Hearing: 05/10/2020

घोषणा की तारीख /Date of Pronouncement: 28/10/2020

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 27.12.2018 passed by the Commissioner of Income Tax (Appeals) -49, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2014-15.

2. The revenue has raised the following grounds: -

- “i. On the facts and circumstances of the case and in law the Ld CIT(A) erred in deleting the disallowance under section 14A of the Act of Rs. 31,79,51,492/-, relying on the decision of Bombay High Court in the case of India Advantage Securities Ltd (1131 of 2013) dated 13.04.2015, even though the Hon’ble Supreme Court in its judgment dated 12.02.2018 in Civil Appeal Nos. 104-109 of 2015, in the case of Maxopp Investment Ltd. vs.



*Commissioner of income- tax New Delhi, has held that as long as an exempt income was earned, the expenditure incurred as attributable to earning such exempt income, had to the disallowed u/s 14A r.w.r. 8D*

- (ii) *"On the facts and circumstances of the case and in law the Ld CIT(A) erred in deleting the disallowance under section 14A of the Act of Rs. 31,79,51,492/-, relying on the decision of Bombay High court in the case of India Advantage Securities Ltd. (1131 of 2013) dated 13.04.2015, even though the Hon,ble Supreme in its judgment dated 12.02.2018 in Civil Appeal Nos. 104-109 of 2015, in the case of Maxopp Investment Ltd. vs. Commissioner of income-tax New Delhi, has held that the dominant purpose for which shares were held was not relevant for applicability of section 14A.*
- (iii) *"On the facts and circumstances of the case and in law the Ld C/T(A) erred in deleting the disallowance under section 14A of the Act of Rs. 31,79,51,492/-, relying on the decision of Bombay High Court in the case of India Advantage Securities Ltd. (1131 of 2013) dated 13.04.2015, even though the Hon'ble Supreme in its judgment dated 12.02.2018 in Civil Appeal Nos. 104-109 of 2015, in the case of Maxopp Investment Ltd. vs. Commissioner of income-tax New Delhi, has held that irrespective of the objective of investment in shares ('when the shares are held as stock-in-trade with a view to earn trading profit or as investment) and the taxpayer earned an incidental exempt dividend income, section 14A is triggered which is based on the theory of apportionment of expenditure between taxable and exempt income."*
- The appellant prays that the order of CIT(A)-49, Mumbai on the above grounds be set aside and that of the Assessing Officer be restored.*
- (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 29.11.2014 declaring income at loss to the tune of Rs.1,37,88,038/- for the A.Y.2014-15. The return was processed u/s 143(1) of the I. T. Act, 1961. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee was engaged in the business of trading in shares and



securities and developing properties. The assessee had earned dividend income in sum of Rs.12,75,92,528/- which was claimed to be exempt. The closing stock of shares, securities and claims was in sum of Rs.712,07,25,552/- (P.Y. Rs.3,59,84,99,593/-). The assessee disallowed a sum of Rs.41,49,114/- i.e. 20% of total expenditure as attributable to the exempt income. Subsequently withdrew the same at the time of assessment. The AO applied the provisions of Section 14A r.w. Rule 8D and assessed the expenditure to earn the exempt income in sum of Rs.322,100,606/-. After the addition of expenses to earn exempt income already declared a sum of Rs.41,49,114/-, the balance of Rs.31,79,51,492/- was added to the income of the assessee. The total income of the assessee was assessed as nil. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 41,49,114/- already declared by assessee but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly relied upon the decision of the Hon'ble Bombay High Court in the case of **India Advantage Securities Ltd. (1131 of 2013) dated 13.04.2015**, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. It is also argued that CIT(A) has ought to relied upon the case titled as **Maxopp Investemnt Ltd. CIT 2018 (91 taxmann.com 154)** in the interest of justice. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-



*“6.1 This is a recurring issue in the case of the appellant and similar disallowance have been made by the AO for the preceding assessment years i.e. AY 2012-13 and 2013-14. In fact the language of the AO in all the three years while making the disallowance is the same. For assessment years 2012-13 and 2013-14, the assessee filed appeal with the CIT(A) who had deleted the disallowance made by the AO. On further appeal to ITAT by the department, the Hon'ble ITAT upheld the order of the Ld. CIT(A) and decided the issue in favour of the assessee. While deciding the issue, the Hon'ble ITAT held as under;*

*"13. We have heard rival contentions and perused the record. The undisputed facts remain that the assessee is a trader in shares and securities and the assessee has held its entire securities as "stock in trade" only. The assessee did not hold any security as its investment. The provisions of sec. 14A read as under:-*

*"14A. ( 1 ) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*

*(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act*

*(3) The provisions of subsection (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:*

*Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise, increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001."*

*Sub.sec.(2) of sec. 14A is relevant for our consideration. The power to disregard the computation made by the assessee is given to the AO under sub. sec(2) of sec. 14A of the Act. It prescribes that the AO can determine the quantum of expenditure to be disallowed only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act. If he is not so satisfied, then the AO has to*



*compute the disallowance in accordance with the method prescribed, i.e., as per Rule 8D of I.T Rules. Hence the mandatory condition prescribed in sec. 14(2) is that the AO, having regard to the accounts of the assessee, has to show that he was not satisfied with the correctness of working of disallowance made by the assessee. If he fails to record his dissatisfaction about the correctness of working of disallowance made by the assessee, having regard to the accounts of the assessee, the AO is not entitled to determine the disallowance in accordance with Rule 8D of I.T Rules.*

*14. The assessee has placed Its reliance on various case laws to support the above said proposition. For the sake of convenience, we extract below the relevant observations made by Hon'ble Supreme Court, Hon'ble jurisdictional Bombay High Court and other High Courts, on which the assessee had placed reliance'.*

*(a) Extract from the judgment of Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Limited 394 ITR 449 (SC)*

*"Nevertheless, irrespective of the aforesaid question, what cannot be denied is that the requirement for attracting the provisions of Section 14A(1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income."*

*"Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim, of the assessee. Whether such determination is to be made on application of" the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable".*

*(b) Extract from the judgment of Hon'ble Bombay High Court in the case of Reliance Capital Asset Management Ltd. 86 taxmann.com 200 (Bom.)*

*The Assessing Officer did not specifically record that he is not Satisfied with the correctness of the claim of the assessee in respect of the expenditure in relation to the income does not form part of the total income under the Act. However, he felt obliged and going by the presence of Rule 8D that once Section 14A is attracted, the disallowance is to be made as per Rule 8D only which has been prescribed by the*



*Legislature. The Assessing Officer has not adverted to the plain language of subsection (2) of Section 14A.*

*It is that mistake committed by die Assessing Officer which was partially corrected by the First Appellate Authority. First Appellate Authority agreed with the assessee that the Assessing Officer has not commented upon the correctness or otherwise of the appellant's working of the claim. He has not specifically rejected that working and has not provided any reason for doing so. The Commissioner was of the view that before proceeding to compute the disallowance under Section 14A as per Rule 80, the Assessing Officer should consider the working of expenses made by the assessee and when he is not satisfied with the said working and terms it as incorrect, based on objective criteria and for cogent reasons, he can then proceed to work out the disallowance under Section 14A as per Rule 80 of the Rules.*

*We cannot find any fault with this conclusion of the First Appellate Authority based as it is on the language of subsection (2) of Section 14A of the Act, reproduced above".*

*(c) Extract from the judgment of Hon'ble Delhi High Court in the case of Hero Management Services Limited 360ITR 68 (Del.)*

*"Further to invoke Rule 8D, the Assessing Officer has to first record a finding that he was not satisfied with the correctness of the claim for expenditure made by the assessee in relation to income, which did not form part of die total income under the Act No such satisfaction has been recorded by the Assessing Officer. In view of die aforesaid discussion, we do riot find any reason to interfere with the impugned order. The appeal has no merit and is dismissed in limine".*

*(d) Extract from the judgment of Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Ltd. 323 ITR 518 (P & H.)*

*'In view of finding reproduced above, it is clear that the expenditure on interest was set off against the income from interest and the investment in the share and funds were out of the dividend proceeds. In view of this finding of fact, disallowance under section 14A was not sustainable. Whether, in a given situation, any expenditure axis incurred, which was to be disallowed, is a question of fact. The contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed under section 14A and the impact of expenditure so incurred cannot be allowed to be set*

*off against the business income which may nullify the mandate of section 24 A, cannot be accepted. Disallowance under section 14A requires finding of incurring of expenditure where it, is found that for earning exempted income no expenditure has been incurred, disallowance under*



*section 14A cannot stand. In' the present case finding on this aspect, against the revenue, is not shown to be perverse. Consequently, disallowance is not permissible".*

*(e) Extract from the judgment of Hon'ble Calcutta High Court in the case of REL Agro Ltd. GA No. 3022 of 2013*

*The Assessing Officer also disallowed the expenditure under section 14A of the Income Tax Act, 1961 without first recording that he was not satisfied with the correctness of the claim, as regards the claim that "no expenditure" WA5 made by the assessee... the disallowance under section 14A of the Income Tax Act, 1961 is plainly contrary to the provisions of the statue. The CIT, in the circumstances, allowed the appeal of the assessee and the Tribunal did not interfere".*

*(f) Extract from the judgment of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. 4021TR 640 (SC)*

*"Having regard to the language of Section 14A(2j) 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".*

*15. In the instant case, we notice that, the assessing officer did not record any dissatisfaction over the amount of disallowance determined by the assessee u/s 14A of the Act, having regard to the accounts of the assessee. Further, we notice that the AO has proceeded on the erroneous presumption that the application of Rule 8D is mandatory in nature, Further the AO has also made certain observations, which are inconsistent with the observations made by High Courts.*

*(a) First of all, the assessee does not hold any security as its investment, whereas the AO has proceeded to make observations on sources of funds for making investments. This fact shows that the AO has not understood the facts correctly.*

*(b) Secondly, the AO has taken the view that the borrowed funds should be considered as used for making investments, which is against the principles laid down by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505).*



*(c) Thirdly, the AO has expressed the view that- making of investments and earning of exempt income requires efforts. This is contrary to the following observations made by Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra):-*

*"40 It is to be kept in mind that in those cases where shares are held as stock in trade as business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits."*

*(d) Fourthly, the AO has observed that the Hon Tale Delhi High Court has held in the case of Cheminvest Ltd (317 ITR 86) that disallowance u/s 14A can be in a year in which no exempt income has been earned or received by the assessee. This interpretation of the AO is not correct as the Hon tile Delhi High Court has held otherwise, i.e., no disallowance is required when there is no exempt income.*

*Thus, we notice that the AO has proceeded to invoke the provisions of Rule 8D of the I.T rules, without showing that he was not satisfied with the workings given by the assessee having regard to the accounts of the assessee. Further, the understanding of AO with regard to the disallowance u/s 14A of the Act is inconsistent with the principles laid down by the Hon'ble High Courts and Supreme Court.*

*16. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in holding that the AO was not justified in invoking Rule .,8D to compute disallowance u/s 14A, without showing that he was not. satisfied with the amount of disallowance worked out by the assessee. Accordingly, we uphold the order passed by Ld CIT(A) on this issue."*

*6.2 The facts are identical for AY 2014-15 also. The AO has used the same language and therefore according to the ITAT decision, he has not recorded his dissatisfaction with the disallowance worked out by the assessee. In such a scenario, the Hon'ble ITAT held that the disallowance u/s. 14A read with Rule 8D cannot be made.*

*6.3 Further, the Hon'ble ITAT at para 19 of the order stated that the assessee has disallowed a sum of Rs.6.01 lakhs and Rs.10,46 lakhs in Ays 2012-13 and 2013-14 respectively against a dividend income of Rs.3.94 crores and Rs.7.78 Crores respectively. The Hon'ble ITAT considered the disallowance worked out by the assessee as mentioned above, as meeting the requirement of section 14A of the Act. In the instant case, the assessee has received dividend income of Rs.12.75 Crores and made a suo moto disallowance of Rs.41.49,119. Respectively following the decision of the Hon'ble ITAT in the appellant own case for AYs 2012-13*



*& 2013-14 on identical facts, the disallowance of Rs.41,49,114/- made by the assessee is considered as meeting the requirement of Section 14A of the Act and further disallowance is warranted. These grounds of appeal are allowed.”*

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the issue on the basis of the decision of Hon'ble ITAT in the assessee's own case for the A.Y. 2012-13 & 2013-14. It is specifically mentioned that the AO had recorded the similar reason while disallowing the expenditure to earn the exempt income in all the three years. The assessee filed an appeal before the CIT(A) who confirmed the order of the AO but the assessee filed an appeal before the Hon'ble ITAT in which the expenditure was restricted to the extent of expenditure which has been declared by assessee. The CIT(A) has reproduced the judgment of the Hon'ble ITAT in his order. The CIT(A) has also discussed the several law including the India Advantage Securities Ltd (supra) and Maxopp Investment Ltd. (supra). The facts are not distinguishable at this stage. Needless to say that the AO nowhere recorded the satisfaction to arrive at this conclusion of reasonable expenditure incurred to earn the exempt income. No books of accounts were examined in this regard. We nowhere found any illegality and infirmity in the order passed by the CIT(A) in question. Accordingly, no interference was warranted on the part of us. We uphold the finding of the CIT(A) on this issue and dismissed the appeal of the revenue.



ITA No. 1562/M/2019  
A.Y.2014-15

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 28/10/2020

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :28/10/2020

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**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**