

IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI  
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT AND  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
ITA No.5528/Mum/2018 (Assessment Year 2014-15)

DCIT, Central Circle-5(2), Room No.1908, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	M/s Satra Properties (India) Ltd. Dev Plaza, 2 <sup>nd</sup> floor, Opp. Andheri Fire Station, S.V. Road, Andheri (E), Mumbai-400058. PAN: AAACE1835C
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Appellant

Respondent

Appellant by : Shri T. S. Khalsa (Sr. DR)

Respondent by : None

Date of Hearing : 19.11.2020

Date of Pronouncement : 11.01.2021

**ORDER**

**PER MAHAVIR SINGH, VICE-PRESIDENT;**

1. This appeal by revenue is arising out of the order of Commissioner of Income Tax (Appeals)-53, Mumbai [for short 'the Id. CIT(A)] in Appeal No. CIT(A)-53/IT-299/DCCC-5(2)/2016-17 order dated 16.07.2018. Assessment was framed by DCIT CC-5(2), Mumbai under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') for the Assessment Year 2014-15 vide his order dated 27.12.2016.
2. The only issue in this appeal of revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income by holding that the assessee has not earned any exempt income. For this revenue has raised following three effective grounds:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,43,25,406/- u/s 14A of the Income Tax Act, 1961 ignoring that the provisions of Section 14A which apply even if no exempt income has actually been earned or received during the year in any form whatsoever. ?"
  2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 by ignoring the provisions of CBDT Circular no. 5/2014 dated 11.02.2014 wherein, it has been clarified that the Rule 8D r.w.s.14A provides for disallowance of expenditure even where the assessee in particular has not earned exempt income?"
  3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 relying upon the decision of the Hon'ble Delhi High Court in the case of Chemin vest Ltd. overlooking the fact that the decision has been superseded by the Hon'ble Supreme Court in its order in the case of Maxopp Investment Ltd. vs CIT(20 18) 402 ITR 640.?"
3. We have heard the contentions and gone through the facts and circumstances of this case. We noted that that the Assessing Officer while framing assessment has made disallowance by invoking the provisions of section 14A of the Act r.w.r 8D of the Income Tax Rules, 1962 (hereinafter 'the Rules'). He invoked rule 8D (2)(ii) of the Rules and disallowed interest expenditure of Rs. 2,22,32,390/-. Under Rule 8D(2)(iii) of the Rules i.e. administrative expenses at Rs. 20,93,016/-. Thereby the Assessing Officer disallowed total expenditure at Rs. 2,43,25,406/-. Before the CIT(A), the assessee claimed that there is no exempt income during the year and hence, no disallowance should be made. We noted that the CIT(A) has deleted the disallowance by observing in para-5.9 as under:

5.9. I have considered the submissions carefully. I am inclined to accept the alternative plea of the appellant based on the judgment of the Hon'ble Delhi High Court dated 02.09.2015 in the case of M/s. Cheminvest Ltd. v. CIT (ITA 749/2014) wherein it has been held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. While setting aside the decision of Hon'ble Special Bench in that case, it has been held that the expression 'does not form part of the total income' in section 14A of the Act envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure in relation to the said income. **It is a matter of record that the appellant has not received any exempt income during the relevant period.** Therefore, respectfully following the ratio of above decision, it is held that the A.O. was not justified in making disallowance u/s.14A r.w. Rule 8D(2). The disallowance so made by the A.O. is directed to be deleted. Accordingly, Ground of Appeal No.3 is partly allowed.

4. When this fact was confronted to Id. Sr. DR, he could not controvert the above fact. Once there is no exempt income, the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC).
5. As the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (supra), we find no infirmity in the order of CIT(A), hence, the appeal of revenue is dismissed.
6. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on 11<sup>th</sup> January 2021.

Sd/-  
**M.BALAGANESH**  
**ACCOUNTANT MEMBER**

Sd/-  
**MAHAVIR SINGH**  
**VICE-PRESIDENT**

Mumbai, Date: 11.01.2021

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai