

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 3407/MUM/2019

:

A.Y : 2013-14

Rafique Abdul Malik
23/C, 20th floor,
Kanchanjunga, 72, Peddar Road,
Mumbai 400 026.

Vs. Dy. Commissioner of Income Tax –
2(2)(2), Mumbai. (Respondent)

PAN : AABPM5599H (Appellant)

Appellant by : Shri K. Gopal

Respondent by : Shri Bharat Andhale

Date of Hearing : 11/01/2021

Date of Pronouncement : 21/01/2021

ORDER

PER RAJESH KUMAR, AM :

This appeal by assessee is directed against the order of learned Commissioner of Income Tax (Appeals) - 5, Mumbai (in short 'the CIT(A)') pertaining to Assessment Year 2013-14.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of disallowance of Rs.10,21,142/- by the learned CIT(A) as made by the Assessing Officer under Section 14A of the Act r.w.r 8D of the Rules. The facts in brief are that the Assessing Officer during the course of assessment proceedings noted that assessee has earned exempt income during the year and has not made any corresponding disallowance of

expenses for earning of the exempt income. Accordingly, after issuing show cause notice to the assessee, the Assessing Officer invoked provisions of Section 14A of the Act r.w.r 8D of the Rules and disallowed a sum of Rs.10,21,142/- comprising of Rs.3,44,954/- as expenses directly relating to earning of exempt income and Rs.6,76,188/- being 0.5% of the average investments. In para 4.1 of the assessment order, the Assessing Officer rejected the submissions of the assessee by citing the same as not acceptable and then invoked the provisions of Section 14A of the Act r.w.r 8D of the Rules. The Assessing Officer has stated that the expenses incurred by way of PMS fee to three funds aggregating to Rs.3,44,954/- was incurred in order to earn taxable income which has been offered to tax and, therefore, not liable to be disallowed under Section 14A of the Act.

3. Aggrieved assessee, filed an appeal before the CIT(A) who also dismissed the appeal of the assessee by holding that the provisions of Section 14A of the Act r.w.r. 8D of the Rules were correctly invoked.

4. We have heard the rival submissions and perused the material on record. We find that the assessee has earned an income of Rs.6,69,35,385/- which has been claimed as exempt without making any *suo moto* disallowance under Section 14A of the Act. We note that the disallowance made by the Assessing Officer comprises of two elements, viz. direct expenses relating to earning of exempt income which were paid to three parties, viz. Motilal Oswal PMS Account – Rs,11,125/-, Trust Investment Equity – Rs.2,06,018/- and Trust Investment Debt – Rs.1,27,812/- aggregating to Rs.3,44,954/-. We also note that the Assessing Officer has made disallowance of Rs.6,76,188/- towards other administration expenses under Rule 8D(2)(iii) by applying rate of 0.5% on

the average investments. In this case, we note that the PMS fee has been paid to three funds as stated above and the investments made has yielded taxable income. The payment of to Motilal Oswal PMS Account was Rs. Rs.11,125/- and the assessee has earned short term capital gain of Rs.24,614/- from the securities dealt through this fund. Similarly, assessee has paid PMS fee to Trust Investment Equity of Rs. 2,06,018/- and claimed the same against short term capital gain of Rs.1,53,995/- which is chargeable to tax. Likewise, assessee paid PMS fee to Trust Investment Debt of Rs.1,27,812/- which has yielded taxable income of Rs.6,08,676/- and thus all these expenses were incurred in relation to earning of taxable income and we find merit in the contentions of the learned counsel for the assessee that these cannot be disallowed as direct expenses relating to earning of exempt income. Consequently, we are inclined to set aside the finding of learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance of Rs.3,44,955/-.

4. So far as the disallowance of Rs.6,76,188/-, being 0.5% of the average investments is concerned, we note that in para 4.1 of his order, the Assessing Officer has simply rejected the submissions of the assessee without pointing out as to how the said submissions are wrong and thus has not recorded any satisfaction before invoking the provisions of section 14A r.w.r. 8D(2)(iii). The assessee has filed Income & Expenditure account before the Assessing Officer and each expense debited therein has been explained as having been incurred in relation to earning of taxable income. The Assessing Officer has not controverted the submissions of the assessee but has simply invoked the provisions of Section 14A of the Act r.w.r 8D of the Rules without recording any satisfaction as to how the books of account of the assessee are not correct. So far as the disallowance under Section 14A of the Act r.w.r 8D(2)(iii) is

concerned, we are not in agreement with the conclusion drawn by learned CIT(A) on this issue. The case of the assessee finds support from the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs CIT, 402 ITR 640 (SC)* . We, therefore, are inclined to set aside the order of learned CIT(A) following the ratio laid down in the above decision and direct the Assessing Officer to delete the addition made u/s 14A of the Act.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st January, 2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 21st January, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai