

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

**BEFORE SHRI SAKTIJI DEY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 5350/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2015-16)

K. Raheja Pvt. Ltd. Plot No. C-30, Block-G, Opp-SIDBI, Bandra Kurla Complex, Bandra-E, Mumbai-400 051	बनाम/ Vs.	DCIT – 4(2), 1918, 19 th floor, Air India Bldg, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACK1949H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Fenil Bhat, AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Gurbinder Singh, DR

सुनवाईकीतारीख/ Date of Hearing	:	18.02.2021
घोषणाकीतारीख / Date of Pronouncement	:	22.04.2021

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-152, in short ‘Ld. CIT(A)’, Mumbai, dated 19.06.19 for AY 2015-16.

2. The brief facts of the case are, assessee filed its return of income on 30.11.2014 declaring loss of ₹ 28,39,12,436/-. The return of income was processed under section 143(1) of the I.T. Act, 1961 (in short Act). The case was selected for scrutiny under CASS. Accordingly, notice under section 143(2) and 142(1) of the Act were issued and served on the assessee. The A.R. of the assessee attended and filed the relevant information as called for.

3. During assessment proceedings, AO observed that assessee has made investment in shares to the extent of ₹ 5,63,38,350/- and incurred in interest expenditure of ₹ 22,65,95,983/-, claimed in its profit and loss account. Further he observed that assessee has made suo-moto disallowance of ₹ 13,85,320/- under section 14A of the Act. The AO asked the assessee to make a submission why disallowance under section 14A read with rule 8D should not be made in its case. In response, the assessee submitted in its reply relying on various decision that section 14A should not be applicable where no dividend is received. However, in the given case assessee has earned exempt income of ₹ 5,26,516/- only and assessee itself has disallowed to the extent of ₹ 13,85,320/-. After considering the submissions of the assessee, AO rejected

the contentions of the assessee and invoked rule 8D (2) of the IT Rules to disallow an amount of ₹ 28,47,860/-.

4. Aggrieved with the above order, assessee preferred an appeal before CIT(A). After considering the submissions of the assessee, Ld CIT(A) agreed with the assessee that the disallowance under section 14A should be restricted to the amount of exempt income earned of ₹ 5,26,516/-. However, since the assessee has suo-moto disallowed an amount of ₹ 13,85,320/-, hence, the disallowance under section 14A is restricted to the amount of ₹ 13,85,320/-.

5. Aggrieved with the above order, assessee preferred an appeal before us raising the following grounds of appeal:-

Ground 1:

On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) ought to have restricted the disallowance under section 14A of the Act to the amount of exempt income earned during the year under consideration i.e. Rs.5,26,516/-. Although the appellant has sumo moto disallowed Rs. 13,85,320/- in its Return of Income.

The appellant hereby prays that on the basis of the findings given by the learned CIT(A) in his order,

stating that disallowance under section 14A cannot exceed dividend income, thus the disallowance under section 14A of the Act must be restricted of exempt/dividend income earned of Rs.5,26,516/-.

The Appellant craves leave to add, omit, or alter grounds of appeal before or during the hearing of the appeal.

6. Before us, Ld AR brought to our notice facts of the case and by relying on the case of Finquest Securities Private Limited (ITA No. 2540/M/2017 dated 23.08.2018) and in the case of Chalet Hotels Ltd (ITA No. 3747/M/2019 dated 11.01.2021) submitted that the Hon'ble ITAT has restricted the disallowance to the extent of exempt income even though assessee has made suomoto disallowance more than the exempt income. He prayed that the facts in the present case also similar to the facts in the above cases, the disallowance should be restricted to the exempt income earned by the assessee.

7. On the other hand, Ld DR relied on the orders passed by Ld CIT(A).

8. Considered the rival submissions and material placed on record. We notice that assessee had suo-moto disallowed an amount of ₹ 13,85,320/-, however assessee had earned exempt income of ₹ 5,26,516/-. After considering the submissions of the assessee, we are in agreement with the assessee based on the decisions of the Hon'ble High Court's that the disallowance under section 14A is restricted to exempt income earned by the assessee. We notice that in the similar situation, the coordinate bench considered the issue and held as below in the case of Chalet Hotels Ltd (supra):-

6. We noted that the short point of dispute is whether the disallowance under Rule 8D(2)(iii) is to be restricted to the extent of exempt income i.e. dividend income earned by assessee at Rs. 13,17,233/- or the disallowance as suo-moto computed by assessee at Rs. 5,86,52,973/-. Here, we have gone through the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd. (supra), wherein the Hon'ble Supreme Court has categorically held that the disallowance cannot exceed the exempt income. Hence, we delete the suo-moto disallowance made by assessee at Rs. 5,86,52,973/- and restricted the disallowance to the extent of exempt income claimed by assessee at Rs.

13,17,233/-. We direct the Assessing Officer accordingly.

9. Therefore, respectfully following the above decision, we are inclined to direct the assessing officer to restrict the disallowance under section 14A to the extent of exempt income earned by the assessee. Accordingly ground raised by the assessee is allowed.

10. In the net result, the appeal filed by the assessee stands **allowed.**

Order pronounced in the open court on 22.04.2021.

Sd/-

(Saktijit Dey)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 22/04/2021

Sr.PS. Dhananjay

Sd/-

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai