

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"F" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 4557/MUM/2018 (A.Y: 2014-15)

M/s. Future Corporate Resources Ltd., {Now Merged with Suhani Trading and Investment Consultants Pvt. Ltd.,} Ground Floor, Knowledge House Off Jogeshwari Vikroli Link Road Shyam Nagar, Jogeshwari(E) Mumbai – 400 060 PAN: AAJCS3979E	v.	ACIT, Ward – 9(3)(2) Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

ITA NO. 4469/MUM/2018 (A.Y: 2014-15)

DCIT – 9(3)(2) Room No. 418, 4 th Floor Aayakar Bhavan M.K. Road Mumbai – 400 020	v.	M/s. Future Corporate Resources Ltd., Ground Floor, Knowledge House Off Jogeshwari Vikroli Link Road Shyam Nagar, Jogeshwari(E) Mumbai – 400 060 PAN: AAJCS3979E
(Appellant)		(Respondent)

Assessee by : Ms. Dinkle Hariya

Department by : Shri Vijay Kumar Menon

Date of Hearing : 28.05.2021

Date of Pronouncement : 30.07.2021

ORDER**PER C.N. PRASAD (JM)**

1. These appeals are filed by the assessee and revenue against order of the Learned Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.04.2018 for the Assessment Year 2014-15.

2. Assessee has raised following grounds in its appeal: -

1. DISALLOWANCE U/S. 14A

1.1 The Learned Commissioner of Income - tax (Appeals) - 16, Mumbai ["Ld. CIT (A)"] erred in confirming the action of the A.O. in making disallowance u/s. 14A of the Income - tax Act, 1961 ["the Act"] to the extent of Rs. 9,11,22,660/-.

1.2 While doing so, the Ld. CIT (A) erred in not adjudicating various issues raised by the Appellant on merits of the case.

1.3 It is submitted that in the facts and the circumstances of the case, and in law, the case of the Appellant was not covered by section 14A of the Act and, in any case, no disallowance was called for under this section.

1.4 Without prejudice to the above, it is submitted that assuming but not admitting that some disallowance was required to be made under section 14A of the Act, the calculation of the disallowance is not in accordance with the law, is arbitrary and is excessive."

3. Briefly stated the facts are that, assessee company which is engaged in the business of advertising agency, customer loyalty programs and investments, telecommunications, had filed its return of income on 27.11.2014, declaring total Loss from business at ₹.5,43,47,946/-.

Subsequently the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. The Assessing Officer completed the assessment u/s. 143 of the Act on 23.12.2016 determining the business loss of ₹.111,00,31,146/-, while computing the loss the Assessing Officer arrived at the disallowance to be made u/s. 14A r.w. Rule 8D of I.T. Rules at ₹.112,12,89,164/- comprising of direct expenses of ₹.3,59,489/- under Rule 8D(2)(i) of I.T.Rules, interest of ₹.91,96,34,750/- under rule 8D(2)(ii) of I.T. Rules and ₹.20,12,94,925/- being 0.5% of the investments towards administrative expenses under rule 8D(2)(iii) of I.T. Rules. However, since the assessee made suomoto disallowance of ₹.1,12,58,018/- the Assessing Officer arrived at the disallowance under u/s. 14A r.w. Rule 8D of I.T. Rules at ₹.111,00,31,146/-. On appeal the Ld.CIT(A) restricted the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules to ₹.9,11,22,660/- which is the exempt income earned by the assessee during the year under consideration. Since the assessee itself made suomoto disallowance of ₹.1,12,58,018/- the Ld.CIT(A) directed the Assessing Officer to restrict the disallowance to ₹.7,98,64,643/-. Against this order both assessee as well as the revenue are in appeal before us.

4. Ld. Counsel for the assessee at the outset submitted that the Assessing Officer has not recorded any objective satisfaction in rejecting

the assessee's suo moto disallowance of ₹.1,12,58,018/- made u/s. 14A of the Act, before invoking the provisions of rule 8D r.w.s. 14A of the Act. Ld. Counsel for the assessee submits that the Assessing Officer did not specifically record that he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of total income. Ld. Counsel for the assessee submits that on a perusal of the Assessment Order it is evident that the Assessing Officer has recorded only general satisfaction and not objective satisfaction having regard to the Books of Accounts maintained by the assessee. Ld. Counsel for the assessee further submits that Assessing Officer has recorded general satisfaction and he has failed to record any objective satisfaction as to how the suo moto disallowance made by the assessee is wrong. Ld. Counsel for the assessee further in support of her submissions placed reliance on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [402 ITR 640 (SC)].

- 5.** Ld. DR vehemently supported the orders of the Assessing Officer.
- 6.** We have heard the rival submissions, perused the orders of the authorities below and the decisions relied on. It is not in dispute that the assessee has furnished a detailed working on suo moto disallowance of ₹.1,12,58,018/- u/s. 14A r.w. Rule 8D of I.T. Rules. The detailed working

was also extracted by the Assessing Officer in the Assessment Order. On a perusal of the Assessment Order we find that Assessing Officer has not recorded any satisfaction as to why this break up of suo moto disallowance of expenses made by the assessee is not satisfactory except stating that the disallowance worked out by the assessee u/s. 14A of the Act is not appropriate considering the fact that the investments, which have the potential of earning exempt income, as per the annual accounts is to the tune of ₹.3959 crores. The Assessing Officer has not gone into the breakup of expenses submitted by the assessee and has not recorded as to why it is not satisfactorily explained by the assessee the said expenditure incurred is insufficient for earning exempt income.

7. In the case of Godrej & Boyce Mfg., Co. Ltd., v. CIT [328 ITR 81] the Hon'ble Bombay High Court held as under: -

".....What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the VBC 32 ITXA626.10 accounts of the assessee. The satisfaction of the

Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law.....”

8. Further, identical issue came up before Hon'ble Bombay High Court in the case of Pr.CIT v. Bombay Stock Exchange Ltd., (2020) 185 DTR 390 (Bom) and the Hon'ble Bombay High Court considering the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., v. CIT [402 ITR 640] held as under: -

"11. Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

12. In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. Commissioner of Income Tax 2 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.

13. In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing Officer for rejecting the sou motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference.

14. *In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.*

15. *Accordingly, appeal is dismissed."*

9. In the circumstances respectfully following the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., v. CIT (supra) and the decisions of the Hon'ble Jurisdictional High Court referred to above , we direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T.Rules for the assessment year under consideration by accepting the suomoto disallowance of expenditure considered by the assessee for earning exempt income for the purpose of computing the disallowance u/s. 14A r.w. Rule 8D of I.T.Rules.

10. In the result, appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced on 30.07.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 30/07/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum