

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 6795/MUM/2019
Assessment Year: 2015-16**

ACIT-22(3),
305, 3rd floor, Piramal Chambers,
Lalbaug, Parel,
Mumbai-400012.

Appellant

Vs. The Sri Gopikrishna Trust,
Piramal Tower, Ganpatrao
Kadam Marg, Lower Parel,
Mumbai-400013
PAN No. AABTT 1795 Q
Respondent

**ITA No. 7005/MUM/2019
Assessment Year: 2015-16**

The Sri Gopikrishna Trust,
Piramal Tower, Ganpatrao Kadam
Marg, Lower Parel,
Mumbai-400013

PAN No. AABTT 1795 Q

Appellant

Vs. ACIT-21(3),
Room No. 209, Piramal Chambers,
Lalbaug, Parel, Mumbai-400012.

Respondent

Assessee by : Mr. Ronak G. Doshi &
Mr. Arjit Jain, ARs

Revenue by : Mr. Gurbinder Singh, DR

Date of Hearing : 22/06/2021

Date of pronouncement : 30/08/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The captioned cross-appeals one by the Revenue and other by the assessee are against the order of Commissioner of Income Tax (Appeals)-33, Mumbai [in short 'CIT(A)'] for the assessment year 2015-16 and arise out of assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

2. Brief facts of the case are, the return of income filed by the assessee on 10.12.2015 declaring income of Rs.4,65,37,020/-. The case was selected for limited scrutiny and accordingly notices u/s 143(2) and 142(1) were issued and served on the assessee. The assessee filed relevant information as called for. During assessment proceedings, the Assessing Officer observed that the assessee had claimed interest expenditure of Rs.42.12 crores and the same was adjusted against interest income of Rs.47.83 crores during this assessment year. Further, he observed that the assessee has received dividend income of Rs.29,15,730/- which was claimed as exempt. The Assessing Officer further observed that the assessee has made investment in shares of Rs.61,46,32,262/- which was entirely from borrowed fund which is shown of Rs.67,84,98,990/- out of total funds available of Rs.67,88,27,498/-. The assessee shown interest expenses of Rs.1,08,27,893/- in that year as compared to the only income shown bank interest of Rs.1,15,727/-. According to AO it clearly indicated that interest claimed on borrowed funds was utilized for the purchase of shares. Further, he made an analysis of the internal movement of funds that indicated, the assessee utilized an amount of Rs.80 crores received from M/s VKP LLP on 18.03.2014 for application of shares of Sunteck Realty Pvt. Ltd. and the said funds received from M/s VKP LLP was interest bearing funds. Further, he

observed that the assessee had applied for shares on 20.08.2014 by transfer of Rs.25 crores to Motilal Oswal Securities Ltd. and the medium of source was from funds received from M/s VKP LLP which was also interest bearing fund. He observed that the assessee utilized the interest bearing funds to invest in the shares and securities. In response to above observations of the AO the assessee submitted that investment of Rs.58.94 crores made on 18.03.2014 in shares of Sunteck Realty Pvt. Ltd. was from interest free loan of Rs.66 crores borrowed on 25.03.2014 from Srikrishna Trust. It was submitted that the loans borrowed from M/s VKT Ventures LLP on 18.03.2014 was immediately paid back on 25.03.2014 out of interest free loan borrowed from Srikrishna Trust. It was also submitted that the assessee earned interest income of Rs.47.62 crores whereas the interest expenses is Rs.42.13 crores and thereby it was evident that the interest free funds borrowed for more than the interest bearing borrowed funds throughout the year. It was also submitted that as on 31.03.2014 the interest free borrowed fund of Rs.66.17 crores and the investment in shares the assessee made of Rs.58.94 crores, therefore, the own funds exceeded the borrowed funds for making investment.

3. After considering the submissions of the assessee, the Assessing Officer by applying the 'FIFO' method of fund movement in investment made by the assessee and also analyzed the borrowed fund utilization by the Trust, he rejected the contentions of the assessee and invoked the provisions of section 14A r.w.r. 8D(2)(ii) to disallow of Rs.5,84,49,455/-.

4. Aggrieved with the above order the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) after considering the detailed submissions of the assessee and various case laws submitted before him he restricted the

disallowance u/s 14A to the extent of exempt income by relying on case of Pr. CIT v. State Bank of Patiala (2018) 99 taxmann.com 286 (SC) and other similar decisions.

5. Aggrieved with the above order both Revenue as well as assessee is in appeal before us raising following grounds of appeal :

Revenue's grounds of appeal

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A r.w.r. 8D(2)(ii) without considering all the relevant facts.
2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in ignoring the latest decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. v. CIT.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in interpreting the intent of which states that "The mandate of section 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income....." as envisaged by the Income Tax Act.

Assessee's Ground of appeal

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowance u/s 14A of the Act to the extent of Rs.29,15,730/- .
2. The appellant prays that the AO be directed to delete the entire disallowance made u/s 14A of the Act or appropriately reduce the disallowance.

6. Before us, the Ld. AR of the assessee brought to our notice the fact of this case from assessment order and findings of Ld. CIT(A). With regard to the appeal filed by the Revenue he brought to our notice the case law of various Courts to submit that u/s 14A disallowance cannot exceed exempt income earned by the assessee. With regard to assessee's appeal he brought to our notice page 2 of the Paper Book (P/B) i.e. income and expenditure account for the year ended 31.03.2015 wherein the assessee has earned interest income of Rs.47.63 crores and at the same time the assessee has claimed expenditure of interest expenses to the extent of Rs.42.13 crores. He submitted that the net income of interest earned by the assessee during the year is Rs.5.49 crores. He submitted that when there is a positive net interest income then the provisions of section 14A cannot be applied. For that proposition, he relied in the case of PCIT v. Nirma Credit & Capital (P.) Ltd. [2017] 85 taxmann.com 72 (Gujarat).

7. On the other hand, the Ld. Departmental Representative (DR) relied on the orders of Assessing Officer.

8. Considered the rival submissions and material on record. We notice that the Assessing Officer invoked the provisions of section 14A r.w.r. 8D(2)(ii) to disallow of Rs.5,84,49,455/- at the same time we noticed that the assessee has earned exempt income of Rs.29,15,730/- only. We notice that Ld. CIT(A) has restricted the disallowance to the extent of exempt income earned by the assessee. We inclined to accept the findings of Ld. CIT(A) which is based on various decisions of Hon'ble Supreme Court and High Courts. Respectfully following the ratio of State Bank of Patiala (supra), we are inclined to reject the grounds raised by the Revenue. Accordingly, the appeal filed by the Revenue is dismissed.

9. Coming to the appeal filed by the assessee, it is brought to our notice by the counsel of the assessee that during this year the assessee has earned net interest income over the interest expenditure claimed by the assessee. Considering the fact that the assessee has earned interest income, it clearly shows that the assessee has applied for investment more of interest free funds to its operation than the interest bearing funds. As held in the case of CIT v. Jubilant Enterprises (P.) Ltd. (416 ITR 58) (Bom. HC) and Nirma Credit and Capital (P.) Ltd. (supra) the Hon'ble High Court of Gujarat and jurisdictional High Court respectively held that for the purpose of applying Rule 8D(2)(ii) what would be considered as an amount of expenditure by way of interest would be the interest paid by the assessee on the borrowings minus the taxable interest earned during the financial year paid that means net interest alone should be considered for disallowance u/s 14A r.w.r. 8D(2)(ii) in the given case, the net interest paid by the assessee is less than the interest earned by the assessee. Therefore, the Rule 8D(2)(ii) cannot be applied in the given case. Therefore, respectfully following the above decisions we are inclined to allow the grounds raised by the assessee and accordingly, we direct the Assessing Officer to delete the additions made u/s 14A r.w.r. 8D(2)(ii).

10. To sum up, the appeal filed by the Revenue is dismissed whereas the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/08/2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/08/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai