

**IN THE INCOME TAX APPELLATE TRIBUNAL, GUWAHATI
'E-COURT' AT KOLKATA**

**Before Shri Partha Sarathi Choudhury, Judicial Member
and Shri Manoj Kumar Aggarwal, Accountant Member**

**I.T.A. No.287/Gau/2019
Assessment Year: 2016-17**

**Hotel Polo Towers (P) Ltd..... Appellant
Polo Grounds,
Shillong-793001,
Meghalaya.
[PAN: AABCT0864B]**

vs.

ACIT, Circle, Shillong..... Respondent

Appearances by:

Shri K. M. Roy, CA, appeared on behalf of the appellant.

Shri N.T. Sherpa, JCIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 10, 2021

Date of pronouncing the order : November 11, 2021

ORDER

Shri Partha Sarathi Choudhury, Judicial Member:

This appeal preferred by the assessee emanates from the order of Ld. CIT(A), Shillong dated 01.05.2019 for assessment year 2016-17 as per the following grounds of appeal”

“1. For that the learned CIT(A) erred in facts as well as in law in not allowing the deletion of addition of Rs.783511/- made u/s 14A and therefore the entire addition of Rs.783511 is liable to be fully deleted.

2. For that the appellant craves leave to add, alter, amend or modify any or all the grounds of appeal prior to or during the course of hearing.”

2. The sole grievance of the assessee is the disallowance made u/s 14A of the Act.

3. The brief facts are that the Assessing Officer observed that the assessee has claimed interest expenses of Rs.30.91,561/-. Exempt income declared at Rs.51,92,551/-.

Out of total investments of Rs.19,35,56,567/- in the balance sheet, Rs.10,39,24,535/- pertains to investment on which exempt income has been earned. The figure at the beginning of the year is Rs.1,68,10,645/-. It was further observed that the assessee had not shown any expenses debited to P&L A/c which relate to exempt income. Hence, provision of section 14A r.w. Rule 8D was applied and addition u/s 14A at Rs.7,83,511/- was made and added to the total income of the assessee. That at the time of hearing, the arguments of the Ld. Counsel for the assessee were two folds. That it is mandatory as per settled legal proposition that the Assessing Officer before making addition u/s 14A of the Act should record satisfaction that it is a fit case for addition under the said provision and should record specific reasons in his order. In this case as evident from the assessment order, no satisfaction has been recorded before arriving at the decision that whether the assessee is liable for any addition u/s 14A or not. That for this proposition, the Ld. counsel placed reliance in the decision of Maxopp Investment vs. CIT reported in [2018] 91 Taxmann 154 (SC) dated 12.02.2018 wherein the Hon'ble Apex Court had observed and held as follows:

“41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”

4. Therefore, it is crystal clear proposition of law that the Assessing Officer needs to record satisfaction that as regards assessee whether section 14A disallowance has to be made or not. In the instant case, no such satisfaction is recorded and hence the disallowance is bad in law and needs to be deleted.

5. The next contention of the Ld. Counsel for the assessee was that the Assessing Officer has made a wrong statement of fact by stating that the assessee had not shown any expenses debited to P&L A/c which relate to exempt income. Demonstrating the

Ld. Counsel brought to our notice the notes forming parts of P&L A/c as on 31st March 2016 wherein at Note 14 the interest income is Rs.4894204.68 whereas the interest expenses claimed by the assessee is specifically mentioned at Note 17 at Rs.3091561/-. Therefore, the assessee has specifically mentioned the expenses in the P&L A/c that relates to exempt income. Hence, the unjustified addition should be deleted.

6. Per contra, the Ld. DR placed reliance on the order of subordinate authorities but principally agreed that as per the decision of the Hon'ble Supreme Court in Maxopp Investment vs. CIT (supra), the Assessing Officer must record satisfaction while invoking the provisions of section 14A which in this case was not apparent from the assessment order. That further on going through the P&L A/c, the interest expenses claimed has been specifically mentioned and the assessee's own funds were sufficient and the said funds were used for earning exempt income.

7. We have heard the rival contentions and perused the materials available on record and considered the judicial pronouncements placed before us. The only grievance of the assessee is of invoking of provision of section 14A and the disallowance made accordingly. The assessee has vehemently argued that there was no satisfaction recorded by the Assessing Officer before making such additions and we observe from the assessment order that there is no iota of satisfaction arrived at by the Assessing Officer while invoking the provision of section 14A of the Act. We take guidance from the decision of the Hon'ble Apex Court as cited by the Ld. Counsel for the assessee wherein the Apex Court has categorically held that the Assessing Officer needs to record satisfaction with regard to the assessee while making any disallowance u/s 14A of the Act. That further while observing the P&L A/c of the assessee, we find that the assertion of the Assessing Officer that expenses were not shown in the P&L A/c is also not correct since the Notes 14 & 17 in the P&L A/c specifically provides for the details of income and the expenses. We also observe that the Ld. CIT(A) has also not dealt with the satisfaction aspect in this matter and he has given a finding that the fund position being hotchpotch and it cannot be said that only own funds were invested to

earn exempt income. The Ld. CIT(A) also fails to arrive at a proper satisfaction for sustaining of this addition u/s 14A and irrespective of the clarity in the accounts of the assessee, the finding by the Ld. CIT(A) that the fund position is such that no funds invested to earn exempt income cannot be ascertained, is therefore to our understanding, not an accurate findings of fact and also of law. Taking the totality of the facts and circumstances and the decision of the Hon'ble Supreme Court in Maxopp Investment vs. CIT (supra), we find that this is not a fit case for addition u/s 14A of the Act and the addition made is hereby deleted.

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

Kolkata, the 11th November, 2021.

Sd/-

**[Manoj Kumar Aggarwal]
Accountant Member**

Sd/-

**[Partha Sarathi Chaudhury]
Judicial Member**

Dated : 11.11.2021
RS

Copy of the order forwarded to:

1. Hotel Polo Towers (P) Ltd
2. ACIT, Circle, Shillong
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True Copy//

By Order

Sr. PS, H.O/D.D.O,
I.T.A.T, Kolkata Benches, Kolkata.