IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1691/Mum/2020
(**निर्धारण वर्ष** / Assessment Year: 2015-16)

ITO-3(3)(3) Room No.672, Aayakar Bhavan, M. K. Road, Marine Lines, Mumbai-400020.	**बनाम**/ Vs.	M/s. SP Ports P. Ltd. Shapoorji Pallonji Centre, 41/44, Shapoorji Pallonji Centre, 41/44, Minoo Desai Marg, Colaba, Mumbai-400005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOCS9797B		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri Om Prakash Singh (DR)
Assessee by:	None

सुनवाई की तारीख / Date of Hearing: 22/11/2021
घोषणा की तारीख /Date of Pronouncement: 16/12/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 17.01.2020 passed by the Commissioner of Income Tax (Appeals) -08 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2015-16.

2. The revenue has raised the following grounds: -

> *" 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO u/s 14A r.w. Rule 8D amounting to Rs.3,19,45,499/-, ignoring the CBDT Circular No.5/2014 dated 11.02.2014 which states that even when the assessee in a particular year has not earned any exempt income but income from investment are capable of being exempt, the provisions of section 14A r.w. Rule 8D is applicable.*

2. The appellant prays that for this and other reasons it is submitted that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee filed its return of income on 25.11.2015 declaring a total income at loss to the tune of Rs.24,14,221/- for the A.Y.2015-16. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of development, leasing, operating etc., of ports. The assessee is the holding company of M/s. Simar Port Ltd. (Simar Port) whereas M/s. Simar Port Ltd., had been awarded concession by the Gujarat Maritime Board for development of an all-weather, deep draft, direct berthing port at Chhara in Gujarat. The assessee invested amounting to Rs.33,01,10,000/- {18978000 Equity Shares and 14033000 Preference Shares}. This share capital was sourced from SPICCPL. These investments was continuing from the earlier period. Further, investments of Rs.5,00,00,000/- in 50,00,000/- equity shares of HPCL Shapoorji Energy Ltd., have also continued undisturbed since earlier period. The AO applied the provision u/s 14A r.w. Rule 8D and Rs.3,19,45,499/- was disallowed. After certain disallowance, the total income of the assessee was assessed to the tune of Rs.3,80,93,260/- and Book Profit u/s 115JB of the Act was assessed of Rs.3,19,45,499/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

4. We have heard the arguments advanced by the Ld. Representative of the Department and have gone through the case filed carefully. Before going

further, we deem it necessary to advert the finding of the CIT(A) on record.:-

> *"4. Decision*
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> *I have carefully gone through the submissions and arguments of the AR of the appellant company. I have also carefully gone through the assessment order. Relevant case laws have been perused and considered.*
>
> *4.1.1 This ground pertains to disallowance of Rs.3,19,45,499/- u/s 14A r.w. rule 8D. The main thrust of the appellant is that the appellant company has not earned any exempt income during the year under consideration. Recently, Hon'ble Supreme Court of India has given a landmark judgement on the section 14A in the case of Maxopp Investment Ltd 91 Taxmann.com 154. The judgement is particularly relevant on the issues of strategic investment and stock in trade, while applying the provisions of section 14A. It is held that If expenditure is incurred on earning dividend income, that much of expenditure which |s attributable to dividend income has to be disallowed and cannot be treated as business expenditure. In those cases, where shares are held as stock-in-trade, main purpose is to trade in those shares and earn profits therefrom, in the process, certain dividend is also earned, though incidentally, which is also an income. This triggers applicability of section 14A which is based on theory of apportionment of expenditure between taxable and non-taxable income. Therefore, to that extent, expenditure incurred in acquiring those shares will have to be apportioned. In the same order, Hon'ble Supreme Court has held that the disallowance u/s 14A cannot exceed the exempt income: / find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has noted in para 40 of said order as under:*

"We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable.

In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT."

4.1.2 Further, in the case of Cheminvest Ltd. vs. CIT 378 ITR 33 (Del). The Hon'ble Delhi High Court has held as.

"In the context of the facts enumerated hereinbefore the Court answer the holding that the expression does not form part of the total income' in section 14A of the envisages that there should be an actual receipt of income, which Is not net ne purpose of income during the relevant previous year for to the said disallowing any expenditure Incurred in relation of exempt income. in other words, Section 14A will not apply If no exempt income is received or receivable during the relevant previous year."

4.1.3 It is worthwhile to mention over here that in a recent Judgement dated 2/7/18 in the case of Chettinad Logistics Pvt Ltd, (95 Taxmann.com 250), the Hon'ble Apex Court re-affirmed its stand when it dismissed the SLP against Ltd Madras High Court ruling that Section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year.

4.1.5 In view of the above detailed discussion of Hon'ble SC order in Maxopp Investments Ltd(supra) and Hon'ble Delhi High Court

decision in Cheminvest Ltd (Supra), it is held here that it is not a fit case for invoking provisions of section 14A as no exempt income has been earned by the appellant at all. The AO is directed to delete the disallowance of Rs.3,19,45,499/- made u/s 14A r.w. rule 8D by him. This ground is therefore allowed."

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy in view of the decision of Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. 91 Taxmann.com 154** and **Cheminvest Ltd. Vs. CIT 378 ITR 33 (Del).** No doubt in the present case, the assessee did not earn any exempt income, therefore, in the said circumstances, there should be no disallowance u/s 14A r.w. Rule 8D. The CIT(A) has rightly followed the decision of the Supreme Court in the case of **Maxopp Investment Ltd.(supra)** and **Cheminvest Ltd, (supra).** The facts are not distinguishable at this appellate stage. Therefore, we affirm the finding of the CIT(A) on this issue and decide all the issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 16 /12/2021

Sd/-	Sd/-
(SHAMIM YAHYA)	**(AMARJIT SINGH)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 16/12/2021
Vijay Pal Singh (Sr. P.S.)

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**