

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM**

AND

BEFORE SHRI RAHUL CHAUDHARY, JM

आयकर अपील सं/ I.T.A. No.1040/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2013-14)

Dy. Commissioner of Income Tax, Central Circle - 8(1) Room No. 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020 PAN : AAACN6871F	बनाम/ Vs.	M/s Niku Mercantile Private Limited, 2 nd Floor, Dhanraj Mahal, CSM Marg, Colaba, Mumbai - 400001
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी) / Respondent)

Revenue by:	Shri C.T. Mathews, DR
Assessee by:	None

सुनवाई की तारीख / Date of Hearing: 01/02/2022
घोषणा की तारीख /Date of Pronouncement: 04/02/2022

आदेश / O R D E R

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Department has challenged the order dated 30.03.2021 passed by the Commissioner of Income Tax (Appeals) -50, Mumbai [CIT(A)] under section 250 of the Income Tax Act, 1961 [Act] in appeal [CIT(A)-50, Mumbai/10288/2018-19] for the assessment year 2013-14, whereby the CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 16.03.2016, passed under section 143(3) of the Act.
2. Brief facts of the case are that the Assessee, a private limited company engaged in the business of trading in shares and securities, filed its return of income for the Assessment Year 2013-14 on 01.10.2013 declaring total loss of INR.10,42,37,642/-. The case of the Assessee was selected for scrutiny. During the assessment proceedings, the Assessing Officer (AO) noticed that the Assessee

had received dividend income of INR 26,91,038/- during the relevant previous year, which was exempt, however, no expenses were allotted to the earning of exempt income. Accordingly, the Assessee was asked to show-cause why disallowance under Section 14A of the Act should not be made. In response to the aforesaid show-cause notice, the Assessee filed reply contending that the provisions of Section 14A were not applicable to the Assessee as the shares were held as stock-in-trade and the intention of the Assessee was not to earn dividend income. However, the AO rejected the contentions of the Assessee to hold that the provisions to Section 14A of the Act are applicable to the Assessee. According to AO the disallowance of expenditure under Section 14A of the Act in relation to exempt dividend income was automatic. Therefore, the AO invoked the provisions of Section 14A(2) read with Rule 8D of the Income Tax Rules, 1962 to disallow an amount of INR 3,67,69,856/- under section 14A of the Act. Since the opening and closing balance of investment was 'Nil', the AO took opening and closing balance of stock-in-trade for the purpose of computing disallowance under the aforesaid Rule 8D of the Income Tax Rules 1962.

3. Being aggrieved, the Assessee preferred appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] challenging the disallowance made under Section 14A of the Act on the ground that the provisions of Section 14A of the Act were not applicable to the Assessee and in alternative, raised the ground that the AO erred in determining total disallowance under Section 14A of the Act at INR 3,67,69,856/- as against exempt dividend income of INR.26,91,038/-. It is the aforesaid alternative ground raised by the Assessee that found favour with the CIT(A) who while holding that the provisions of Section 14A of the Act are applicable to the Assessee restricted the disallowance under Section 14A of the Act to INR 26,91,038/- being the amount of exempt income, inter alia, following the judgment of Hon'ble Supreme Court in Maxopp Investment Ltd. vs. CIT : 402 ITR 640 (SC), and the judgment of the Hon'ble Bombay High Court in the case of Nirved Traders P Ltd. vs. DCIT : ITA No. 419 of 2017, decided on 23.04.2019.

4. The Appellant/Department being aggrieved by the relief granted by the CIT(A) has preferred the present appeal. The grounds of appeal, which are connected, read as under:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s 14A to the extent of exempt income earned by the assessee which is contrary to CBDT Circular No. 5/2014 which clarifies that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.?”

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the disallowance u/s 14A in view of the finding of the Hon’ble Supreme Court in para 42 of their decision in the case of M/s Maxopp Investment Ltd. vs. CIT in Civil Appeal No. 104-109 of 2015 dated 12/02/2018, wherein the Hon’ble Supreme Court have upheld the principle of apportionment in cases where the assessee has mixed funds.”

5. We have heard the contentions of the Ld. Departmental Representative who relied upon the order passed by the Assessing Officer to contend that the AO has correctly computed the amount of disallowance under Section 14A of the read with Rule 8D and that the CIT(A) has erred in restricting the disallowance under Section 14A of the Act to the amount of exempt income only. We have also perused the material on record and duly considered factual matrix of the case as also the applicable legal position.
6. The Jurisdictional High Court has, in the case of Nirved Traders P Ltd. vs. DCIT: ITA No. 419 of 2017, vide judgment dated 23.04.2019 decided this issue in the favour of the Assessee. In that case the substantial question of law before the Hon’ble Bombay High Court was whether the Tribunal was right in law in confirming the disallowance under Section 14A of the Act in excess of the exempt income earned by the Assessee. Reversing the decision of the Tribunal the Hon’ble Bombay High Court held as under:

“5. Having heard the learned Counsel for the parties and having perused the documents on record, consistently different High Courts in the country have taken a view that the disallowance under Section 14A of the Act read with Rule 8D of the Rules cannot exceed the Assessee's exempt income. The Delhi High Court, in the case of Cheminvest Ltd. Vs. Commissioner of Income Tax, has held that when the Assessee has not earned any income which was exempt from tax, disallowance of the expenditure under Section 14A read with 8D of the Rules would not be permissible.

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8. Recently, this Court, in a decision dated 4th February, 2019, in the case of *The Pr. Commissioner of Income Tax-10 Vs. HSBC Invest Direct (India) Ltd.* had observed as under:

“4. Having heard learned Counsel for the parties and perused documents on record, we notice that in Cheminvest Ltd. (supra) Delhi High Court had referred to and relied upon its earlier decision in the case of CIT Vs. Holcim India (P) Ltd. (I.T.A. No.486 of 2014, decided on 5th September 2014). we further notice that this Court in Income Tax Appeal No.693 of 2015 by an order dated 21st November, 2017 while dismissing the Revenue's appeal on similar issue had noted that the decision of Delhi High Court in case of Holcim India (P) Ltd. (supra) had adopted the same principles. In the present case, Counsel for the Revenue however, points out that this is not a case where the assessee had earned no income which was exempt from tax. However, in our opinion, the ratio of the above noted decisions in the cases of Cheminvest Ltd. and Holcim India (P) Ltd. (supra) would include a facet where the assessee's income exempt from tax is not NIL but has earned exempt income which is larger than the expenditure incurred by the assessee in order to earn such income. In such a situation that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. We do not find any error in the view of the Tribunal. We record that the assessee had offered voluntary disallowance of expenditure of Rs.1.30 crores, which is not been disturbed by the Tribunal. 5. The tax appeal is dismissed.”

9. In view of such consistent trend of the High Courts, we answer the question in favour of the Assessee. We reverse the decision of the Tribunal to the extent of limiting the disallowance under Section 14A of the Act to a sum of Rs.1,13,72,545/-”(Emphasis Supplied)

7. The CIT(A) has rightly granted relief to the Assessee by restricting the disallowance under Section 14A of the Act to the amount of exempted dividend income of INR.26,91,038 by, inter alia, following the above judgment of the jurisdictional High Court and the order passed by the CIT(A) to this extent is sustained.

In the result, the present appeal by the Department stands dismissed.

Order pronounced in the open court on 04/02/2022.

Sd/-
(Shamim Yahya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04/02/2022
Alindra, PS

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

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