

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 7984/DEL/2018 (A.Y 2015-16)**

**(THROUGH VIDEO CONFERENCING)**

HT Media Ltd. 18-20, Kasturba Gandhi Marg, New Delhi <b>PAN No. AABCH3165P</b> <b>(APPELLANT)</b>	Vs	Addl. CIT Range-4, C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. V. P. Gupta, Adv</b>
<b>Respondent by</b>	<b>Sh. Ratan Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>24.02.2022</b>
<b>Date of Pronouncement</b>	<b>08.03.2022</b>

**ORDER**

**PER YOGESH KUMAR US, JM**

This appeal is filed by the assessee against the order dated 20/09/2018 passed by the CIT(A)-35, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

*“1. That the CIT(A) erred in upholding disallowance made by the Assessing Officer of Rs.2,75,13,769/- in addition to disallowance of Rs. 13,75,000/- made by the appellant*

*company in the return of income u/s 14A read with Rule 8D of Income- tax Rules without properly considering and adjudicating the contentions of the company and by wrongly relying on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC), which is not applicable to the facts & circumstances of the appellant company.*

*2. That the CIT(A) erred in not appreciating that the Assessing Officer had not recorded proper satisfaction in terms of section 14A of Income-tax Act, which is mandatorily required to be recorded considering the facts of the assessee and, therefore, the basis provided in Rule 8D of Income-tax Rules could not be applied.*

*3. That the CIT(A) also failed to appreciate that no disallowance on account of interest could be made in the case of the appellant company as no borrowed funds had been utilized for the purpose of investments and to this extent CIT (A) erred in not following the holdings of CIT(A), ITAT and of High Court in earlier years.*

*4. That the CIT(A) also erred in not appreciating that the appellant had made suo moto disallowance on account of administrative expenses in it's return of income of Rs. 13,75,000/- on the basis of calculations of administrative expenses incurred by it, which calculations had not been rejected by the Assessing Officer and, therefore, ad-hoc basis provided in Rule 8D could not be applied for determining the disallowance on account of administrative expenses in the case of the appellant.*

5. *That the CIT(A) also erred in not considering and adjudicating the alternate contention of the appellant company that on the basis of average investments on which exempt income was received during the year, disallowance on account of administrative expenses as per Rule 8D worked out to be Rs.28,47,500/- at 0.5% and, therefore, disallowance on account of administrative expenses ought to have been restricted to the aforesaid amount.*

6. *That the order passed by CIT(A) is bad in law and, therefore, deserves to be quashed and addition made by the Assessing Officer needs to be deleted.*

3. We have heard Ld. Counsel for the appellant and also the Ld. Sr. DR for the respondent. The similar issues involved in the present Appeal had come up for consideration before this Tribunal in Assessee's own case in ITA No. 1876/Del/2018. The Tribunal vide Order dated 26/08/2021, held as follows:

*"13. We have considered the rival submissions as well as relevant material on record. So far as the issue of excluding the investment made in the subsidiary company while computing the average investment for the purpose of disallowing the indirect administrative expenses under Rule 8D(2)(iii) of the Income Tax Rules the issue is now covered by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Vs. CIT (supra) as well as the decision dated 29.03.2019 of Hon'ble Jurisdictional High Court*

*in assessee's own case in ITA No. 281/2019. This Tribunal for the AY 2012-13 has considered this issue in para 6 & 7 as under:*

*“6. At the outset, the Counsels fairly brought to the notice of the Bench, the order of the Hon'ble Jurisdictional High Court clarifying the exclusion of income derived from strategic investments for the purpose of computation of disallowance. The order of the Hon'ble High Court is as under:*

*IN THE HIGH COURT OF DELHI AT NEW DELHI  
ITA 281/2019 & CM APPL. 14303/2019*

*THE PR. COMMISSIONER OF INCOME TAX-4 .....Appellant*

*Through : Mr. Ruchir Bhatia, Sr. Standing Counsel.*

*Versus*

*H.T. MEDIA LTD. .... Respondent*

*Through : Mr. V.P. Gupta and Mr. Arunav Kumar, Advs.*

*CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE PRATEEK JALAN*

*ORDER*

*29.03.2019*

*“The question urged by the Revenue in its appeal is with respect to the correctness of the remand made by the ITAT in its impugned order; the remand was on two aspects i.e. the calculation of average investments (confined to the income generating part thereof) and the exclusion of tax exempt income derived from strategic investments.*

*The observation of the ITAT on the latter aspect, i.e. **exclusion of tax exempt income derived from a strategic investments, is not a correct view in the light of the decision of the Supreme Court in Maxopp Investment Ltd. Vs. Commissioner of Income Tax, (2018) 402 ITR 640.** Accordingly, the observations of the ITAT on this aspect are set aside. **However, its observations with respect to the calculation of disallowance u/s 14A being confined to investments that derived tax exempt income are valid** in the light of the Division Bench ruling in *ACB India Ltd. Vs. ACIT, (2015) 374 ITR 108 (Del.)*.*

*In view of the above clarification, the ITAT's order, to the extent that it makes observations with respect to exclusion of income derived from strategic investments, is hereby set aside.”*

*7. Following the order of the Hon'ble High Court, the revised disallowance is comprehensively determined as under:*

“CIT(A) vide para 5.1d of the order upheld the disallowance to the extent of Rs. 26,70,000/-, which was determined as under following the judgment of Hon’ble Delhi High Court in the case of ACB India Ltd. vs. ACIT, 374 ITR 108 (Del.).

<b>Particulars</b>	<b>Investment as on 31.03.2011 (crores)</b>	<b>Investment as on 31.03.2012 (crores)</b>	<b>Average Investment (crores)</b>
Investments on which dividend income was received during the year.	117.75	102.75	110.25
Less: Investment in subsidiary company.	56.85	56.85	56.85
Remaining investment	60.90	45.90	53.40
Disallowance at 0.5%			Rs. 26,70,000

In view of judgment of Hon’ble Supreme Court in the case of Maxopp Investment Ltd. (2018) 402 ITR 640 (SC), investment in subsidiary company is also to be considered for the purpose of disallowance. Accordingly, the order of CIT(A) is to be reversed to the extent he had excluded average investment of Rs. 56.85 crores in the subsidiary company. Accordingly, disallowance following the judgment of Hon’ble Delhi High Court in the case of ACB India Ltd. Vs. ACIT, 374 ITR 108 (Del.) and taking into consideration the aforesaid judgment of Hon’ble Supreme Court in the case of Maxopp Investment Ltd. disallowance as per Rule 8D would work out as under: -

<b>Particulars</b>	<b>Investment as on 31.03.2011 (crores)</b>	<b>Investment as on 31.03.2012 (crores)</b>	<b>Average Investment (crores)</b>
Investments on which dividend income was received during the year.	117.75	102.75	110.25

Disallowance at <b>0.5%</b>			Rs. 55,12,500
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13.1 Accordingly, this issue is decided against the assessee and in favour of the Revenue and to that extent the order of the CIT(A) is set aside. The AO is directed to re-compute the disallowance by including the investment made in the subsidiary company.

14. As regards the disallowance made by the AO on account of interest expenditure, we find that the AO has not disputed the fact that there is no direct interest expenditure for earning the exempt income. Further, once the assessee has brought on record the fact that the loans were taken from the Banks for specific purpose of business as well as the projects then the same cannot be utilized for the purpose of investment made in shares and mutual funds and consequently the question of apportionment of interest expenditure u/s 14A read with Rule 8D does not arise. This issue was also considered by the Hon'ble Jurisdictional High Court in assessee's own case reported in 399 ITR 576. The CIT(A) has also recorded this fact that the loans taken by the assessee in the earlier years were utilized for the specific purpose as those were taken for setting up of the projects as well as for the purpose of financing import of raw material. These facts as recorded by the CIT(A) has not been disputed by the AO while filing the cross appeal. Even during the

*course of hearing, the Revenue has not disputed the fact that the assessee has taken the loans for specific purpose and the AO has not brought any material or fact on record to say that the assessee has diverted the loan to the investment made in the shares and mutual funds. Further, during the year under consideration, though there is a change in the investment portfolio, however, the total investment as on 31.03.2013 is less than the investment as on 31.03.2012. Accordingly, there is no extra fund utilized by the assessee during the year for making the investment in shares or securities but the sale proceeds of the existing investment is more than the purchases, if any made during the year. The AO has not made any disallowance on account of interest expenditure u/s 14A of the I.T. Act in the preceding years. Therefore, when no fresh investment is made other than the proceeds of the sale of existing investment then the disallowance of interest expenditure is not warranted. Hence, we do not find any error or illegality in the impugned order of the CIT(A) qua this issue of deleting the disallowance made by the AO u/s 14A of the Act on account of interest.”*

4. In view of the above Order of the Coordinate Bench of this Tribunal, we respectfully follow the same. Accordingly, we remit the issue regarding to disallowance u/s 14A of IT Act R/w Rule 8D (2) (iii) of Rules to the file of the AO for re-computation as discussed in Para 13.1 of the above Order. Regarding disallowance under Rule 8D (2) (ii) of IT Rules on account of interest

expenditure, the grounds of Appeal are allowed as discussed in para 14 of the above Order.

5. In the result, the Appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on this 08<sup>th</sup> Day of March, 2022**

**Sd/-  
(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

Dated: 08/03/2022  
*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI