

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “E”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.36/M/2020
Assessment Year: 2014-15**

Dy. CIT, Circle-3(3)(1), Room No.609, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Sarthak Industries Ltd., 302, Devkrupa Building, 28 Raichur Street, Nariman Point, Mumbai – 400 009 PAN: AABCA3214A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri B.K. Bahchi, D.R.

Date of Hearing : 07.03.2022

Date of Pronouncement : 25.03.2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Dy. Commissioner of Income Tax-3(3)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 14.10.2019 passed by Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2014-15 on the grounds inter alia that:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is correct in deleting the disallowance U/S.14A read with Rule 8D stating that

Assessee's own funds were more than investment made and not considering that the decision 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, have upheld the principle of apportionment in cases where the assessee has mixed funds and interest has been paid?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in directing the AO to allow the claim of set-off of long term capital loss on sale of shares against the long term capital gains arising on sale of land without appreciating that the long term capital gains on sale of shares being exempt u/s. 10(38), the loss was not liable to be set off against the taxable long term capital gains on sale of other assets or to be carried forward for set off against the taxable long term capital gains in the following assessment years?

3. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

4. The appellant craves leave to amend, alter, delete or add grounds which may be necessary”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee company is into the business of manufacturing and fabrication of LPG cylinders and merchant trading. During the assessment proceedings the Assessing Officer (AO) noticed that the assessee has claimed dividend income of Rs.1,18,642/- as exempt under section 10(34) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by making suo-moto disallowance under section 14A of the Act at Rs.10,500/-. The AO by disagreeing with the working made by the assessee company

invoked provisions under section 14A of the Act read with Rule 8D of the Income Tax Rules (hereinafter referred to as the Rules) and made disallowance under section 14A of the Act to the tune of Rs.2,31,057/- (Rs.2,41,557 /- – Rs.10,500/- already made by the assessee.) The AO also disallowed set off of Long Term Capital Loss (LTCL) of Rs.3,13,21,338/- against Long Term Capital Gain (LTCG) of Rs.7,58,23,341/- on the ground that the income includes loss.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has allowed the appeal filed by the assessee. Feeling aggrieved from the impugned order passed by the Ld. CIT(A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

Ground No.1

5. The AO made disallowance of Rs.2,41,557/- out of which the assessee has already made suo-moto disallowance of Rs.10,500/-

by invoking the provisions contained under section 14A read with

Rule 8D by making working as under:

I	Expenses directly attributable to exempt income (Demat Charges Rs.2.500)	Rs.2,500
II.	Formula : A X B / C A: Expenses not directly related to exempt income (interest) i.e. 1,10,27,091 B: Average value of investment on the opening and closing day of the previous year i.e. (2,64,97,359 + 16,09 ,830)/2 = 1,40,53,595 C: Average value of assets on the opening and closing day of the previous year i.e. (954169337 + 882090820)/2 = 918130079 <u>10,27,091 X 1,40,53,595</u> 91,81,30,079	Rs.7 1,68,789
III.	0.5% of average value of investment on the opening and closing day of the previous year i.e. 0.5% of B	Rs.70,268
Aggregate of I + II + III		Rs.2,41,557

6. The Ld. CIT(A) decided this issue in favour of the assessee by returning following findings:

“3.1.2 These grounds relate to disallowance of Rs.2,31,057/- u/s 14A r.w.rule 8D over and above suo moto disallowance of Rs.10,500/- made by the appellant. The Assessing Officer has discussed this issue at para 5 of the order. I find that this identical issue stands covered by decision of Hon'ble ITAT Mumbai in its own case in ITA no.3677/M/2017 for AY 2011-12 dated 25.07.2018, wherein the Hon'ble Bench had decided the issue in favour of the appellant. The relevant extract of the above order is reproduced here as below:-

"7. Whereas the Ld. AR, on the other hand, laid stress on the non recording of the satisfaction by the AO which is mandatory requirement for invoking the provision of section 14A read with rule 8D. The Id. AR further submitted that the interest income during

the year as shown in schedule J was Rs.57,83,581/- whereas the interest on finance charges were to the tune of Rs.35,76,574/- thus resulting into net income at Rs.22,07,007/- and further contended that when there is a net positive interest income no disallowance of interest expenses is required to be made. To support his contentions, the Ld. AR relied on the decision of a couple of decision namely; CIT vs. Jubilant Enterprises Pvt. Ltd. in ITA No. 1512 of 2014 (Bom. HC) and CIT vs. Jiwrajika Associates vehemently press that the assessee's own funds and therefore the Ld. CIT(A) directly relied on the decision of CIT vs. HDFC bank Ltd. (supra). Thus, finally the Ld. AR argued that the order of Ld. CIT(A) is well reasoned and therefore needs to be affirmed.

Having heard both sides and perusing the material on record we find that the AO has not recorded any satisfaction at the time of invoking the provision of section 14A read with rule 8D which is mandatory requirement of law. Further, we find that assessee's own funds were far more than the investments made in the shares which yielded exempt income and the Ld. CIT(A) has rightly followed the decision of the Jurisdictional High Court in the case of CIT vs. HDFC Bank Ltd. (supra). We also find merit in the contention of the Ld. AR that where the netting of interest income and interest expenses turns out to be positive i.e. if the interest income is more than the interest expenses no disallowance under section 14A is called for. Thus, we find no infirmity in the order Ld. CIT(A) deleting the addition of Rs.4,80,500/- and accordingly we dismiss ground Nos. 1 & 2 raised by the Revenue."

3.1.3 *Since the facts and circumstances are the same for this assessment year, except for the amount involved, following decision of the Hon'ble ITAT Mumbai for assessment year A.Y 2011-12 above, the A.O. is directed to delete the disallowance of Rs.2,31,057/- u/s 14A r.w. rule 8D. This ground of appeal is allowed."*

7. Undisputedly, the assessee company has claimed exempt dividend income to the tune of Rs.1,18,642/- under section 10(34) of the Act by making suo-moto disallowance of Rs.10,500/- under section 14A of the Act @ 0.5% of the average investment. It is also not in dispute that no new investment in shares has been made by the assessee company during the year under assessment, which was reduced from Rs.2,64,96,898/- to Rs.16,09,369/-.

8. The Ld. A.R. for the assessee contended that since there is no new investment in shares made by the assessee company during the year under assessment disallowance interest in respect of expenses as per Rule 8D(ii) is not sustainable.

9. We have perused the order passed by the Ld. CIT(A) who has thrashed the facts in detail and when there is no fresh investment by the assessee company in shares during the year under assessment Rule 8D(ii) is not attracted. So the assessee company has rightly made suo-moto disallowance of Rs.10,500/- @ 0.5% of the average investment. So we find no scope to interfere into the findings returned by Ld. CIT(A), hence ground No.1 raised by the Revenue is hereby dismissed.

Ground No.2

10. The assessee company has claimed adjustment of LTCL of Rs.3,13,21,338/- against the LTCG of the property sold during the year of Rs.7,58,23,341/- which the AO has disallowed on the ground that when the income includes loss, the loss is arising out of sale of shares/mutual funds which are subjected to STT also are not part of the total income and as such assessee is not entitled for adjustment of LTCL against its LTCG.

11. However, the Ld. CIT(A) decided this issue for statistical purposes by returning the following findings:

“3.3.1 During the course of appellate proceedings, the authorised representative of the appellant discussed the grounds and subsequently made the written submissions. The relevant extract of the same corresponding to the above ground is reproduced as following:-

"Direction for carried forward of speculation loss Rs.57831865/-.

The assessee company shown speculation loss on commodity exchange during the year and claimed carried forward in the subsequent years profit, if any. The directions not issued by learned AO while computing the total income. The same may kindly be allowed for carried forward and oblige."

3.3.2 These grounds relate to carry forward of speculation loss of Rs.5,78,31,865/-. The AO is directed to verify the amount of speculation loss in accordance with law in consequence of this order subject to the condition that they may be allowed to be set-off only against any speculation income in future. These grounds are allowed for statistical purposes.”

12. When the assessee company has merely sought direction from the Ld. CIT(A) for allowing of carry forward of speculation loss of Rs.5,78,31,865/- on the commodity exchange during the year and claimed carry forward in the subsequent years' profit, the Ld. CIT(A) has directed the AO to verify the amount of speculation loss in accordance with the law, if any speculation loss is there the same may be set off against any speculation income in the future.

13. Since the AO has been given the liberty to proceed as per law only to set off speculation loss that too in accordance with the law against any speculation income of the assessee in future, no ground is made out to interfere into the findings returned by the Ld. CIT(A), hence ground No.2 is also determined against the Revenue.

14. Ground No.3 is general in nature, hence needs no specific findings.

15. In view of what has been discussed above, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 25.03.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.03.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.