

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

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

**ITA No.4707/M/2019
Assessment Year: 2014-15**

Dy. Commissioner of Income Tax- 3(3)(2), Room No.628, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020 (Appellant)	Vs.	M/s. Sky Appliances Ltd., 171, 17 th Floor, C-Wing, Mittal Court, Nariman Point, Mumbai – 400 021 PAN: AAICS8688M (Respondent)
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Present for:

Assessee by : None
Revenue by : Shri B.K. Bagchi, D.R.

Date of Hearing : 08 . 03 . 2022

Date of Pronouncement : 08 . 03 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Dy. Commissioner of Income Tax- 3(3)(2), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 22.05.2019 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 circumstances of the case and in law, the Ld. CIT(A) was justified in holding that no disallowance u/s 14A is called for in respect of investments which do not earn exempt income which is contrary to

CBDT Circular No.5/2014 which clarified 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 holding that no disallowance u/s 14A is called for in respect of investments which do not earn exempt income in view of the decision of the Hon'ble Supreme Court 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 has held that Section 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade?

3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in directing the AO to ascertain the quantum of expenditure incurred for the purpose of earning exempt income and make disallowance under Clause (f) of Explanation 1 to Section 115JB of the Act which is contrary to the decision of the Hon'ble IT AT 'D' Bench in the case of ITO vs. RBK Share Broking Pvt. Ltd. - 37 taxman 128(2013) and the decision of the Hon'ble ITAT 'F' Bench in the case of D.C.I.T. Cen. Cir. 18 & 19, Mumbai vs. Viraj Profiles Ltd. (2015) 64 taxmann.com 52 (Mumbai -Trib.)/2016, 156 ITD 72 (Mumbai - Trib.) wherein it is clear that the provisions of section 14A r.w.r. 8D is applicable for computation of book profit u/s 115JB of the Act?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the provision for warranty and maintenance expenses of Rs.2,70,13,460/- without appreciating that the assessee had not furnished the requisite details and documentary evidence for the claim and that the claim did not satisfy the methodology prescribed by the Apex Court in Rotork Controls India (P) Ltd. vs. CIT314 ITR 62 (SC)

5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the provisions for warranty and maintenance expenses of Rs.2,70,13,460/- without appreciating the fact that such

provision is an unascertained liability, created for future utilization and the AO has rightly added the same to the book profit in terms of clause (c) of Explanation (1) of section 115JB of the Act?

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

7. 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 of electronic goods and investment in shares, claimed its income/loss under the heads “Business income” and “Income from other sources”. The Assessing Officer (for short ‘the AO’) after noticing the huge investments in shares by the assessee made an enquiry and invoked provisions contained under section 14A read with rule 8D and proceeded to make disallowance under section 14A of the Income Tax Act, 1961 (for short ‘the Act’) on the basis of working given as under:

**Working of expenses attributable to exempt income
as per Rule 8D of the Income-tax Rules 1962:**

I.	Expenses directly attributable to exempt income (Demat]	Rs.NII
II.	Formula : $A \times B / C$ A: Expenses not directly related to exempt income (interest) i.e. Rs.85,79,84,829 B: Average value of investment on the closing day of the previous year i.e. $(14430689 + 215974689)/2 = 115202689$ C: Average value of assets on the opening and closing day of the previous year i.e.	Rs.85,24,064

	$\frac{(11724701882 + 11466621337)}{2} = 161161209$ $\frac{21306548 \times 115202689}{11595661610} = 211680$	
III.	0.5% of average value of investment on the opening and closing day of the previous year i.e. 0.5% of B = 576013	Rs.5,76,013
Aggregate of I + II + III		Rs.91,00,077

3. Consequently the AO disallowed an amount of Rs.91,00,077/- under section 14A of the Act. The AO also made disallowance of Rs.270,13,460/- on account of provision for warrantee expenses and thereby framed the assessment at the total loss of Rs.79,87,71,355/- under section 143(3) of the Act

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the disallowance by partly allowing the appeal filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) Revenue has come up before the Tribunal by way of filing the present appeal.

5. From 05.04.2021 to 08.12.2021 Shri Mayank Chauhan appeared on behalf of the assessee. Thereafter despite issuance of notices none appeared on behalf of the assessee. We have decided to dispose of this appeal with the assistance of the Ld. D.R. for the Revenue/appellant. Perused the order passed by the Ld. Lower

Revenue Authorities and thrashed the facts in the light of the law applicable thereto.

Ground Nos.1, 2 & 3

6. The AO made a disallowance of Rs.91,00,077/- under section 14A read with Rule 8D(ii)(iii) of the Rules. The Ld. CIT(A) deleted the addition made by the AO by returning the following findings:

“3.1.3 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 is 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. Hon'ble Supreme Court has also held that the disallowance u/s 14A cannot exceed the exempt income: I 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 IT AT."

3.1.4 In view of the above detailed discussion of Hon'ble SC order in Maxopp Investments Ltd, 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. 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 Ld Madras High Court ruling that Section 14A (cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year.

3.1.5 In view of this established judicial position, the AO is directed to delete the disallowance of Rs.90,77,759/- made u/s 14A r.w.rule 8D. This ground is therefore allowed."

7. When undisputedly no exempt income has been earned by the assessee during the year under assessment qua the investment considered by the AO for the purpose of disallowance under section 14A read with rule 8D, no disallowance is sustainable in view of the decision rendered by Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT 91 taxmann.com 154. So we are of the considered view that the Ld. CIT(A) has rightly decided the issue in favour of the assessee.

8. So far as the question of making addition to the book profit computed under section 115JB of the Act qua disallowance made under section 14A read with rule 8D is concerned, we are inclined to agree with the reasoning given by the Ld. CIT(A) that when the substantive ground of appeal i.e. disallowance made under section 14A read with rule 8D is decided in favour of the assessee this ground being consequential in nature does not require any adjudication. Moreover, Hon'ble Bombay High Court in case of CIT vs. Bengal Finance & Investments Pvt. Ltd. in ITA No. 337 of 2013 order dated 10.02.2015 held that amount disallowed under section 14A of the Act cannot be added to arrive at book profit for the purpose of section 115JB of the Act.

9. So we find no illegality or perversity in the findings of the Ld. CIT(A) and hence ground No.1, 2 & 3 are determined against the Revenue.

Ground No.4 & 5

10. The AO made disallowance of Rs.2,70,13,460/- claimed by the assessee being provision for warrantee expenses debited to the P&L account. The Ld. CIT(A) deleted this disallowance by returning following findings:

“3.3.3 This ground relates to disallowance of Rs.2,70,13,460/- being provision for warranty expenses

debited to Profit & Loss Account. This disallowance is discussed in para 6 of the assessment order by the AO. This issue had also come up before my Ld. Predecessor in the appellant's appeal for A.Y. 2013-14 wherein Ld. Predecessor vide order CIT(A)-8/IT-546/15-16 dated 03.10.2017 decided this issue in favour of the appellant. The relevant extract of the order is reproduced here for ready reference:-

"5.1.3 I have considered the assessing officer's order as well as the appellant's authorised representative's submission. I find that the appellant submits that the provision has been made for an ascertained liability based on past experience. The product is covered under warranty. In the past, provisions have been made and utilised for payments under warranty. Thus, the provision cannot be said to be for any unascertained liability. Even the judgements relied upon by the appellant clearly hold that the provision for warranty is not an unascertained liability and hence, cannot be added to book profit computed u/s. 115JB of the Act. It is thus recognised that a provision for warranty sells a number of items and past experience shows that in some cases defects are found resulting in settling a warranty obligation. The liability has to be estimated in a reliable manner based on past experience. In view of the above, clause 'c' of section 115JB of the Act which deals with unascertained liabilities is not applicable in the afore-stated facts of the appellant's case.

5.1.4 I find that it is not in dispute that the vast array of products manufactured by the appellant are sophisticated consumer appliances. The appellant has also been in the business for long enough to have known the trend of defects. It is also a known fact that consumers of expensive appliances give preference to goods with warranty and hence, the warranty becomes an integral part of the sale price for the manufacturer because of the brand image and, therefore, the sales turnover depends on such warranties. Therefore, I find that the principles laid down in the judgement of Hon'ble Supreme Court in

Rotork Controls India (P) Ltd. V. CIT 314 ITR 62 (SC) are applicable in the instant case.

5.1.5 I also find that the assessing officer has not given due consideration to the principles laid down by Hon'ble Supreme Court and other judicial authorities. He has dismissed the contentions of the appellant in a summary manner. The assessing officer has not required the appellant to give any statistical analysis or basis of calculating provisions for warranty. He has not given any reasons to refute the Note No 31 of Notes to Accounts of the appellant's duly audited accounts. Nothing has been brought forth by the assessing officer to disprove these observations made by an auditor. Therefore, in view of the facts and circumstances of the case and the ratio of various judicial pronouncements as mentioned above, the addition so made by the assessing officer is deleted. Thus, this ground of appeal is allowed."

3.3.4 It is also found that the Hon'ble ITAT in the case of appellant's sister concern Gran Electronics Pvt. Ltd, ITA No 3518/Mum/2017, for AY 2011-12 also, has dismissed the Revenue's appeal on the same ground. Since the facts and circumstances are the same for this assessment year, except for the amount involved, following decision of the my Ld. Predecessor for AY 2013-14 above, the A.O. is directed to delete the disallowance of Rs.2,70,13,460/being provision for warranty expenses debited to Profit and Loss Account. This ground of appeal is allowed."

11. We have perused the order passed by the Ld. CIT(A) who has followed the order passed by his predecessor on the identical issue in assessee's own case for A.Y. 2013-14 which was decided on the basis of law laid down by Hon'ble Supreme Court in case of Rotork Controls India (P) Ltd. vs. CIT 314 ITR 62 (SC). Likewise addition of Rs.2,70,13,460/- to book profit computed under section

115JB of provisions for warrantee expenses debited to P&L Account is also not sustainable being consequential in nature on the ground that substantive ground of appeal has already been decided in favour of the assessee.

12. So the order passed by the Ld. CIT(A) by thrashing the facts and law applicable thereto does not require any interference by the Tribunal, hence hereby upheld. Consequently grounds No.4 & 5 are decided against the Revenue. In view of what has been discussed above, present appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 08.03.2022.

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

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

Mumbai, Dated: 08.03.2022.

* 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.