

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Virtual Court]**

(Before Sri Manish Borad, Accountant Member & Sri Sonjoy Sarma, Judicial Member)

**I.T.A. Nos.: 359 & 360/Kol/2021
Assessment Years: 2013-14 & 2014-15**

**Mayank Jalan.....Appellant
[PAN: AEUPJ 1360 E]**

Vs.

DCIT, Circle-4(1), Kolkata.....Respondent

Appearances by:

*Sh. S.K. Tulsian, Adv. and
Ms. Puja Somani, appeared on behalf of the Assessee.*

Sh. Surendra Kumar Mishra, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : February 16th, 2022

Date of pronouncing the order : April 6th, 2022

ORDER

Per Manish Borad, Accountant Member:

These appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2013-14 & 2014-15 are directed against the order of Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC)[in short Id. "CIT(A)"] dated 26.08.2021 vide Appeal Nos. CIT(A), Kolkata-2/10490/2016-17 & CIT(A), Kolkata-2/10797/2016-17 which are arising out of the assessment orders framed u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 14.03.2016 & 27.09.2016 respectively.

2. The assessee is in appeal before the Tribunal raising the following grounds:

Assessment Year 2013-14:

"1 That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in law in upholding the disallowance of expenditure of Rs.44,62,222/- made by the Ld. A.O. by invoking the provisions of sec. 14A r.w.r. 8D(2) of the Rules in spite of the fact that the shares which yielded dividend during the year were held as stock-in-trade and not as investment and hence disallowance of expenditure u/s 14A of the Act does not apply to such stock-in-trade.

2. That, the Ld. C.I.T.(A) further erred in inferring on sheer misinterpretation that the issue of disallowance u/s 14A of the Act on shares held as stock-in-trade is settled by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 without considering the clear distinction made in the said decision between the dividend earned on the shares acquired to retain the controlling interest in the investee company and the shares purchased for the purpose of liquidating when price goes up to make profit out of such trading, as in the case of the assessee.

3. That, the Ld. C.I.T.(A) further erred in not considering the decision relied upon before him in the case of Nice Bombay Transport (P) Ltd. vs. ACIT (2019) 175 ITD 684 (Del) wherein on the identical facts and circumstances it has been held by the Hon'ble Tribunal by respectfully following the binding precedent of Hon'ble Supreme Court that the application of Rule 8D qua sec.14A of the Act was not correct inasmuch as the dividend income from the shares held as stock-in-trade was only incidental to the trading activities and hence the disallowance of Rs.44,62,222/- upheld by him is liable to be deleted.

4. That, as the order of the Ld. C.I.T.(A) in having upheld the disallowance u/s 14A r.w.r. 8D of the Rules on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and accordingly the carried forward business loss rightly calculated by the assessee needs to be allowed.

5. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

Assessment Year 2014-15:

“1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in law in upholding the disallowance of expenditure of Rs.24,11,896/- made by the Ld. A.O. by invoking the provisions of sec.14A r.w.r. 8D(2) of the Rules and by not considering the assessee's calculation of disallowance u/s 14A under investment portfolio in spite of the fact that the shares which yielded dividend during the year were held as stock-in-trade and not as investment and hence disallowance of expenditure u/s 14A of the Act does not apply to such stock-in-trade.

2. That, the Ld. C.I.T.(A) further erred in inferring on sheer misinterpretation that the issue of disallowance u/s 14A of the Act on shares held as stock-in-trade is settled by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 without considering the clear distinction made in the said decision between the dividend earned on the shares acquired to retain the controlling interest in the investee company and the shares purchased for the purpose of liquidating when price goes up to make profit out of such trading, as in the case of the assessee.

3. That, the action of the Ld. C.I.T.(A) in upholding the disallowance u/s 14A r.w.r. 8D(2) of the Rules is also bad in law in view of the decision relied in the case of Nice Bombay Transport (P) Ltd. vs. ACIT (2019) 175 ITD 684 (Del) wherein on the identical facts and circumstances it has been held by the Hon'ble Tribunal by respectfully following the binding precedent of Hon'ble Supreme Court that the application of Rule 8D qua sec.14A of the Act was not correct inasmuch as the dividend income from the shares held as stock-in-trade was only incidental to the trading activities and hence the disallowance of Rs.24,11,896/- upheld by him is liable to be deleted.

4. That, the Ld. C.I.T.(A) further erred in not considering the calculation of disallowance of Rs. 18,40,427/- u/s 14A r.w.r. 8D(2) of the Rules offered before him vide the assessee's letter dated 17.07.2019 and after adjusting suo moto disallowance already made earlier amounting to Rs. 13,14,646/-, the additional

disallowance should have been restricted to Rs.5,25,801/-instead of Rs.24,11,896/- made by the A.O. and upheld by the Ld. C.I.T.(A) and hence the disallowance needs to be rectified accordingly.

5. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

The assessee has taken the following additional ground of appeal for Assessment Year 2014-15:

“1. That the disallowance u/s 14A of the Act read with Rule 8D of the Rules in line with the judgment of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT reported in (2018) 402 ITR 640 (SC), Calcutta High Court in the case of REI Agro Ltd. (GA No. 3581 of 2013) and Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd. reported in (2009) 313 ITR 340 comes to Rs. 1,04,317/- as against a sum of Rs. 18,40,427/- wrongly computed by the assessee during appellate proceedings, the learned CIT(A) thus erred in upholding the disallowance u/s 14A of the Act read with Rule 8D at Rs.37,26,542/-, being the amount disallowed by the learned AO in his order passed u/s 143(3) of the Act dated 27-09-2016 and hence the disallowance u/s 14A of the Act should be restricted to Rs. 1,04,317/-.”

3. From perusal of the grounds, we find that the common issue relates to the disallowance u/s 14A of the Act. We will first take up assessee’s appeal for AY 2013-14.

4. Brief facts as called out in the records are that the assessee is an individual engaged in the business of investment and trading in shares. Income of Rs.35,96,170/- declared in the return of income for the AY 2013-14 filed on 28.09.2013. During the course of assessment proceedings carried out after serving of notices u/s 143(2) & 142(1) of the Act ld. AO observed that the assessee had earned dividend income of Rs.53,01,650/- but no *suo-moto* disallowance has been made by the assessee in the computation of income. Ld. Counsel for the assessee stated that the shares are held as stock in trade, therefore, no disallowance is called for. Ld. AO was not satisfied and he computed the disallowance u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short the “Rules”) at Rs.44,62,222/-.

5. The assessee carried the matter before ld. CIT(A) but failed to succeed.

6. Now the assessee is in appeal before the Tribunal.

7. Ld. Counsel for the assessee referring to the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC)* and the decision of this Tribunal in the case of *REI Agro Ltd. in ITA No. 1331/Kol/2011* order dated 19.06.2013 and also the decision of this Tribunal in the case of *Ratnabali Capital Markets Pvt. Ltd. vs. ACIT in ITA No.356/Kol/2018* order dated 22.05.2020 submitted that in view of the above judgments and decisions, computation of disallowance u/s 14A of the Act has been worked out at Rs.19,90,908/- which the assessee is agreeable to offer for taxation.

8. Per contra, ld. D/R vehemently argued supporting the orders of the lower authorities.

9. We have heard rival contentions and perused the records placed before us. During AY 2013-14 the assessee had earned dividend income of Rs.53,01,650/-. No disallowance was made in the computation of income. Ld. AO computed the disallowance as per Rule 8D of the Rules at Rs.44,62,222/-. Ld. CIT(A) confirmed the view of the AO. Before us, the ld. Counsel for the assessee had submitted a revised calculation of disallowance u/s 14A of the Act and the same is reproduced below:

"Computation of Disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules at Rs.19,90,908/- is as follows:

Disallowance u/s 14A read with Rule 8D(2)

Rule 8D(2)(i)

Expenses Directly related to exempt income

Share Depository expenses (A) 1,931

Average of Investment in Shares (B) 1,35,96,264
 (1,35,53,114+1,36,39,414)/2

Average of Investment in shares held as Stock-in-Trade (C) 2,98,46,317

(3,09,34,967 + 2,87,57,666)/2

TOTAL (B+C) 4,34,42,581

Proportionate Direct Expenses 1,327 (Note 1)
(A*C/B+C)

Rule 8D(2)(ii)

Proportionate Interest expense

Net Interest Expense (A) 59,77,851

Average value of investments in dividend yielding shares (B)

(2,22,45,451+1,65,11,000)/2	(Refer	1,93,78,226
Chart-2)		
Average value of assets (C.)		6,12,03,976
(6,16,48,882+6,07,59,069)		
Proportionate Interest Expense (A*B/C)		18,92,690(Note 2)
Rule 8D(2)(iii)		
Opening value of Investments generating exempt income (Chart-1)		2,22,45,451
Closing value of Investments generating exempt income (Chart-1)		1,65,11,000
Average value of Investments generating exempt income		1,93,78,226
0.5% of average investments =		96,891 (Note 2)
Total Disallowance warranted u/s 14A of the Act read with Rule 8D of the Rules		19,90,908”

9.1. The above calculation has been made by the assessee considering the ratio laid down by the Hon’ble Supreme Court in the cases of *Maxopp Investment Ltd. (supra)* and *REI Agro Ltd. (supra)*. The assessee is engaged in investment in shares as well as trading of shares and, therefore, at the year end the assessee has stock in trade of equity shares and investment in equity shares. Hon’ble Supreme Court in the case of *Maxopp Investment Ltd. (supra)* has dealt with the issue “whether disallowance u/s 14A of the Act is called for where the shares are held as stock in trade” and have held that the applicability of Section 14A of the Act is based on the theory of apportionment of expenditure between taxable and non-taxable income and, therefore, to that extent depending upon the facts and circumstances of each case, the expenditure incurred in acquiring those shares will have to be apportioned.

9.2. Further, we find that in the case of *REI Agro Ltd. (supra)* this Tribunal has firstly held that while computing disallowance u/s 14A of the Act r.w.r. 8D of the Rules, it can be computed only by taking into consideration the average value of investment appearing in balance sheet as on first and last day of the previous year from which exempt income is or going to be earned and secondly also held that the disallowance u/s 14A of the Act is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income.

9.3. We find that based on the settled judicial precedence as referred above the assessee has filed the revised calculation of disallowance u/s 14A of the Act taking into consideration the apportionment of expenses relating to equity shares held as stock in trade/equity shares held as investment and secondly, only considering the investments which has yielded/or will yield dividend income and not the other investments which have not yielded/will not yield any dividend exempt income. We have examined these details which are in consonance to the audited financial statements filed before us. Therefore, under the given facts and circumstances of the case disallowance u/s 14A of the Act is sustained only to the extent of Rs.19,90,908/- as against the disallowance u/s 14A computed by the AO at Rs.44.62.333/-. Thus, the assessee gets relief of Rs.24,71,314/- for the excess disallowance made by the AO. Thus, grounds raised on the issue of disallowance u/s 14A of the Act for AY 2013-14 are partly allowed.

10. Now, we take up the assessee's appeal for AY 2014-15. Facts in brief are that during the AY 2014-15 dividend income of Rs.3,15,93,118/- is earned. The assessee made *suo-moto* disallowance of Rs.13,14,646/- in the computation of income. Ld. AO examined these details but did not agree and computed the disallowance u/s 14A of the Act at Rs.37,26,542/-. The assessee carried the matter before the ld. CIT(A) and during the course of proceedings submitted a fresh calculation of disallowance of Rs. 18,40,427/-. Ld. CIT(A) was not satisfied and he confirmed the action of the AO. The assessee is now in appeal before this Tribunal raising various grounds of appeal and also raising additional ground stating that only the correct amount of disallowance needs to be sustained in view of the decisions of this Tribunal in the case of *M/s. MKJ Enterprises Limited vs. DCIT, Circle-4(2), Kolkata* in *ITA No. 2516/Kol/2018* order dated 01.09.2020. Apart from referring to the judgments of Hon'ble Supreme Court in the cases of *Maxopp Investment Ltd. (supra)* and *REI Agro Ltd. (supra)* reliance was also placed on the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities and Power Ltd. (313 ITR 340) (Bombay High Court)* and the

following calculation has been made computing the disallowance u/s 14A of the Act at Rs.1,04,317/- only:

“Computation of Disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules at Rs.1,04,317/- is as follows:

Rule 8D(2)(i)

Expenses Directly related to exempt income

Share Depository expenses (A)	4,977	
Average of Investment in Shares (B)	1,36,64,459	
(1,36,89,504+1,36,39,414)/2		
Average of Investment in shares held as Stock-in-Trade (C)	2,58,57,734	
(2,29,57,801+2,87,57,666)/2		
TOTAL (B+C)	3,95,22,193	
Proportionate Direct Expenses (A*C/B+C)		3,256 (Note 1)

Rule 8D(2)(ii)

Proportionate Interest expense

Capital Account of the Assessee as on 31-03-2014	2,72,85,945	
Average value of Investment in shares which yielded dividend during the year		
(2,10,30,666+1,93,93,465)/2 (Refer Chart -1)	2,02,12,066	
Own Funds sufficient to invest in dividend yielding shares so no disallowance warranted under Rule 8D(2)(ii)		- (Note 2)

Rule 8D(2)(iii)

Opening value of Investments generating exempt income (a)	2,10,30,666	
Closing value of Investments generating exempt income (b)	1,93,93,465	
Average value of Investments generating exempt income (a+b/2) (Refer Chart -1)	2,02,12,066	
0.5% of average investments =		1,01,060 (Note 3)
Total Disallowance warranted u/s 14A of the Act read with Rule 8D of the Rules		1,04,317”

11. While taking us through the above calculation, ld. Counsel for the assessee submitted that the assessee had sufficient capital to cover up the investments made in equity shares and shares held as stock in trade and, therefore, no disallowance for interest is called for u/s 14A of the Act and only apportioned expenses directly incurred for earning dividend income and 0.5% of average investment generating exempt income needs to be

sustained. However, the ld. D/R opposed this request stating that the assessee has revised its own calculation u/s 14A of the Act on three occasions.

12. We find that the average value of investments generating exempt income as on 31.03.2014 is Rs.2,02,12,266/- against which the accumulated profits and capital of Rs.2,72,85,945/-. Ld. Counsel for the assessee has canvassed a picture showing the calculation of disallowance only at Rs.1,04,317/- taking into consideration the judgment of the Hon'ble Apex Court in the cases of *Maxopp Investment Ltd. (supra)*, *REI Agro Ltd. (supra)* and *Ratnabali Capital Markets Pvt. Ltd. (supra)*. There is no contrary finding of Revenue authorities that accumulated capital and reserves are not applied for making investments in equity shares. It is a fact that the assessee has himself made *suo-moto* disallowance of Rs.13,14,646/- in the computation of income and even challenged before the ld. CIT(A) to restrict the disallowance u/s 14A of the Act at Rs.13,14,646/- and now before us providing the calculation of Rs.1,04,317/- as a disallowance to be made for u/s 14A of the Act. In support of the claim that disallowance u/s 14A of the Act should be restricted only at Rs.1,04,317/-, ld. Counsel for the assessee firstly for the purpose of computing the disallowance has relied on the finding of this Tribunal in the case of *REI Agro Ltd. (supra)* and secondly for the proposition that the assessee should be taxed for the correct income has relied on the decision of this Tribunal in the case of *M/s. MKJ Enterprises Limited (supra)*.

12.1. So far as the calculation of disallowance u/s 14A of the Act, it has been reproduced above. We have gone through the same in the light of the judgment of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd. (supra)* and also the ratio laid down by the Tribunal in the case of *REI Agro Ltd. (supra)* as well as the ratio laid down by the Bombay High Court in the case of *Reliance Utilities and Power Ltd. (supra)* and find that the interest disallowance was not called for u/s 14A of the Act and disallowance for the remaining limbs of Rule 8D of the Rules should be only restricted on the

investments in equity shares which yields exempt income or can yield exempt income and arrive at the finding that disallowance of Rs.1,04,317/- has been rightly computed.

13. Another issue which comes before us is that the assessee has himself offered the disallowance u/s 14A of the Act at Rs.13,14,646/- before Id. CIT(A) and thereafter, submitted a new calculation of disallowance at Rs.18,14,427/- before Id. CIT(A) and now before us a third calculation of Rs.1,04,317/- has been filed. Now whether this claim of the assessee can be entertained at this stage, needs to be examined. We find that the same issue came up before this Tribunal in the case of *M/s. MKJ Enterprises Limited (supra)* wherein also the assessee offered a disallowance u/s 14A of the Act at Rs.45,11,497/-. Subsequently during the proceedings before this Tribunal, it has been submitted that in view of the judicial precedence, disallowance u/s 14A of the Act cannot exceed dividend income earned during the year at Rs.8,88,566/-. This Tribunal, thereafter, referring to various judgments including the judgment of the Hon'ble Calcutta High Court in the case of *CIT vs. Britannia Industries Ltd.* reported in 396 ITR 677 and the judgment of the Hon'ble Gujarat High Court in the case of *Milton Laminates Pvt. Ltd.* reported in 218 Taxman 108 and in view of the *CBDT Circular No. 14* dated 11.04.1955 instructing the officers of the Department not to take advantage of ignorance of the assessee as to his rights and also assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him, restricted the disallowance u/s 14A of the Act to Rs.8,88,566/- as against the disallowance u/s 14A of the Act *suo-moto* offered by the assessee in the computation of income at Rs.45,11,497/-.

14. The ratio, laid down by this Tribunal in the case of *M/s. MKJ Enterprises Limited (supra)* referred above, is squarely applicable on the issue in hand before us and respectfully following the same we are of the

considered view that since the correct amount of disallowance u/s 14A of the Act for the AY 2014-15 is at Rs.1,04,317/-, the assessee should not be taxed for the higher amount of disallowance offered in the computation of income. Therefore, the assessee gets part relief and against the disallowance of Rs.13,14,646/- offered in the computation of income, the same is restricted to Rs.1,04,317/-. Accordingly the additional ground raised by the assessee is allowed. Since we have already allowed the additional ground, other grounds raised by the assessee for AY 2014-15 become infructuous.

15. In the result, the appeals of the assessee for AY 2013-14 is partly allowed and for AY 2014-15 is allowed.

Kolkata, the 6th April, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 06.04.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Mayank Jalan, Unit No.1, 3rd Floor, Sagar Estate, 2, Clive Ghat Street, Dalhousie, Kolkata-700 001.**
2. **DCIT, Circle-4(1), Kolkata.**
3. CIT(A)-National Faceless Appeal Centre (NFAC).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata