

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 973/Mum/2019 (A.Y. 2013-14)

Hemant Kumar Ruia 405, Mimraj Building Kalbadevi Road Mumbai-400 002.  PAN : AADPR8349A (Appellant)	Vs.	ACIT-18(1) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	None
Department by	Shri Airiju Jaikiran
Date of Hearing	28.03.2022
Date of Pronouncement	01.04.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 17.12.2018 pertains to A.Y. 2013-14.

2. The grounds of appeal read as under :

1. The Ld. CIT (Appeals) erred in dismissing the appeal on the lone ground of disallowance u/s 14A read with Rule 8D of IT Rules, 1962.

1.1 The Ld. CIT (Appeals) erred in upholding the decision of AO did not appreciate that no disallowance u/s 14A could have been made in the absence of satisfaction recorded by him before proceeding to make disallowance under Rule 8D2(ii) and (iii) of I.T. Rules, 1962.

1.2 In so doing the Ld CIT (A's) did not follow the principle laid down by the Apex Court in the case of Maxopp Investment Ltd. (2018) 91 Taxman.com 154 (SC) of apportionment of expenditure between income liable to tax and income which is exempt.

1.3 The Ld. CIT (A's) erred in upholding the decision of AO that interest on Public Provident Fund was liable to be considered for the purpose of computing disallowance u/s 14A of the Act.

1.4 In any event of the matter the Ld. CIT (A's) ought to have restricted the disallowance to the extent of Rs. 62,977/- being dividend received on shares held as stock in trade.

3. In this case the ITAT had earlier passed an ex-parte order in which it was noted that the assessee proposed to go for Vivad se Vishwas Scheme. Hence, assessee's appeal was treated as dismissed vide order dated 8.2.2021. However, subsequently, assessee requested to recall the said order of the ITAT. However, despite notice none appeared before the ITAT. Hence, I dispose off the appeal by hearing learned Departmental Representative and perusing the records. The sole issue relates to disallowance under section 14A of the Act. The Assessing Officer noted that the assessee has made investment into funds which yield or may yield exempt income. Hence he wanted to inquire whether any income attributable to earn exempt income has been disallowed or not. The assessee responded that it was carrying on the business of trading in shares and securities and hence it pleaded that no disallowance under section 14A of the Act can be done. However, Assessing Officer rejected the same and made the computation under section 14A read with rule 8D of the Act.

4. Against the above order assessee appealed before learned CIT(A). Learned CIT(A) upheld the order of the Assessing Officer.

5. Against this order the assessee has filed appeal before the ITAT.

6. I have heard learned Departmental Representative and perused the record. I note that the assessee's plea before the Assessing Officer that the assessee is trading in shares hence, no disallowance under section 14A should be done not sustainable on the touchstone of the Hon'ble Supreme Court Maxopp Investment Ltd. Vs. CIT (91 Taxmann.com 154). However, assessee's plea that disallowance should be restricted to exempt income earned is sustainable. Accordingly I direct that the disallowance in this case should be restricted to exempt income earned.

7. In the result, appeal by the assessee stands partly allowed.

Order pronounced in the open court on 01.04.2022.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/04/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS