

IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5298/MUM/2019  
(ASSESSMENT YEAR: 2015-16)

M/s Subhkam Ventures (India) Private Limited,  
14<sup>th</sup> Floor, Maker Chamber IV, 222,  
Nariman Point, Mumbai - 400021  
[PAN: AAACW1624M]

..... Appellant

**Vs**

The Deputy Commissioner of Income Tax,  
Circle – 1(3)(1), Mumbai,  
Room No. 540, Aayakar Bhavan,  
M.K. Marg, Churchgate,  
Mumbai - 400021

..... Respondent

Appearances

For the Respondent/ Assessee : Shri Sanjay Parikh  
For the Appellant/Department : Shri Tejinder Pal Singh

Date of conclusion of hearing : 17.02.2022  
Date of pronouncement of order : 11.05.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 10.12.2018, passed by the Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter referred as 'CIT(A)'] in appeal [CIT(A)-6/IT-91/2017-18] for the Assessment Year 2015-16, whereby the CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 27.12.2017, passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].
2. The appellant has raised 5 grounds of appeal, all pertaining to disallowance made under Section 14A of the Act.

3. The brief facts relevant to the issue for consideration are that Appellant, a private limited company engaged in the business of dealing/investing in shares and securities, filed its return of income for the Assessment Year 2015-16 on 29.09.2015 declaring total loss of INR 40,22,01,558/-. During the relevant previous year, the Appellant received dividend income of INR 50,27,67,196/-. In the return of income, the Appellant offered a disallowance of INR 9,78,642/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules').
4. The case of the Appellant was selected for scrutiny and the Appellant was asked to provide explanation to support his claim that INR 9,78,642/- should be disallowed in terms of Section 14A of the Act. In reply to the same the Appellant filed letter, dated 18.12.2017, providing justification and offered to tax further disallowance of INR 1,87,714/- citing inadvertent mistake committed in computing value of average investments, thus, taking the amount of disallowance computed by the Appellant in terms of Section 14A of the Act read with Rule 8D(2)(iii) of the Rules to INR 11,66,299/- (INR 9,78,642/- + INR 1,87,714/-). The Appellant computed amount of disallowance in terms of Section 14A read with Rule 8D(2)(ii) of Rules as 'Nil'.  
  
The Assessing Officer (AO) did not accept the justification/computation offered by the Appellant and vide order dated 27.12.2017, passed under Section 143(3) of the Act, made a disallowance to INR 1,01,79,883/- under Section 14A read with Rule 8D(2)(ii) of the Rules in addition to the suo motu disallowance of INR 11,66,299/- offered by the Appellant.
5. Being aggrieved, the Appellant carried the issue in appeal before CIT(A), and challenged the disallowance of INR 1,01,79,883/- under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. The CIT(A) granted some relief to the Appellant by partly allowing the appeal vide order dated 10.12.2018.

6. Not being satisfied, the Appellant has preferred the present appeal raising the following grounds:

- “1. The learned Commissioner of Income Tax (Appeals) 6, Mumbai [CIT(A)] erred on facts and in law in confirming the additional disallowance made by the Deputy Commissioner of Income Tax, Circle - 1(3)(1), Mumbai (AO) of Rs. 1,13,46,239/-.*
- 2. The learned CIT(A) failed to appreciate that the AO had not recorded any objective satisfaction while making the additional disallowance u/s. 14A of Rs. 1,13,46,239/-.*
- 3. The learned CIT(A) without appreciating the facts of the appellant’s case erred on facts and in law in holding that the decision of the hon’ble Supreme Court in Maxopp Investments Ltd. v. CIT 91 taxmann.com 154 (SC) was applicable to the facts of the appellant’s case.*
- 4. The learned CIT(A) and AO erred on facts and in law in holding that all investments, other than investments which yielded taxable income, have to be included while computing the disallowance u/s, 14A. The appellant prays that the additional disallowance made by the AO u/s.14A of Rs. 1,13,46,239/ and as confirmed by the CIT(A) may be deleted.*
- 5. The Applicant prays that the additional disallowance made by the AO under Section 14A of INR 1,13,46,239/- as confirmed by the CIT(A) may be deleted. ”*

7. At the outset, the Ld. Authorised Representative of the Appellant appearing before us invited our attention to order, dated 23.09.2021, passed by the Tribunal in Appellant’s own case in ITA No. 55 & 5682/Mum/2018 pertaining to Assessment Years 2013-14 and 2014-15, respectively, wherein in identical facts and circumstances the additions

made by the AO under Section 14A of the Act read with Rule 8D have been deleted. He submitted that during the relevant previous year, aggregate of own funds and interest free funds of the Appellant were more than the investments in tax-free securities and therefore, no disallowance could have been made under Section 14A of the Act as per the judgments of Hon'ble Bombay High Court in the case of CIT Vs HDFC Bank Ltd: [2014] 366 ITR 505 (Bombay) and HDFC Bank Vs DCIT: [2016] 383 ITR 529.

8. The Ld. Departmental Representative verified the fact that the Tribunal has, vide common order dated 23.09.2021, allowed the appeals of the Appellant herein for the Assessment Year 2013-14 and 2014-15. However, Ld. Departmental Representative still relied upon the order passed by the CIT(A) to contend that sufficient relief has already been granted to the Appellant by the CIT(A).
9. We have perused the material on record including the relevant orders/judgments. In Appellant's own case pertaining to the Assessment Years 2013-14 and 2014-15, The Tribunal has, vide order dated 23.09.2021, deleted the addition made by the Assessing Officer under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules by following the decision of Hon'ble Bombay High Court in the case of CIT Vs HDFC Bank Ltd: (supra) and HDFC Bank Vs DCIT (supra). The relevant extract of the aforesaid decision of the Tribunal reads as under:

*"9. We have heard the rival contentions of both the parties and perused the material on record. The Ld. A.R. has filed before us the working of average investments and average own funds which were also filed before the authorities below, which are extracted below are for the sake of ready reference and convenience.*

Particulars	31st March, 2014	31 <sup>st</sup> March, 2013	Page No. of paper book
<b>Total Investments as per Note No.10</b>	775,386,357.00	1,105,781,079.00	11, 16 & 17
Less : Investment in	<u>75,085,700.00</u>	101,800,000.00	17
Growth Funds -	700,300,657.00	1,003,981,079.00	
Subhkam Growth Fund	26,225,910.00	52,451,820.00	
Less : Investment in foreign companies -	<u>647,848,837.00</u>	951,529,259.00	17
Subhkam Overseas	<u>647,848,837.00</u>	17,000,000.00	
Less: Investment in properties - Panyam Cements & Mineral		934,529,259.00	17
<b>Inventories as per Note No. 13</b>	757,488,040.00	372,915,849.00	9
Total investments to be considered for disallowance u/s. 14A	<u>1,405,336,877.00</u>	<u>1,307,445,108.00</u>	
Average Value of Investments		<u>1,356,390,992.50</u>	
<b>Own Funds</b>			
Share Capital	19,910,370.00	19,710,370.00	9
Reserves and Surplus	1,277,813,184.00	1,265,316,966.00	9
Trade Payables	22,443,548.00	18,713,281.00	14
Unsecured Loan from Directors	90,600,000.00	7,500,000.00	14
Average Own Funds	<u>1,410,767,102.00</u>	<u>1,311,240,617.00</u>	
		<u>1,361,003,859.50</u>	

10. We find from the above that the total investments as per note No.9 were Rs.77,53,86,357/- which comprised of investments in growth funds Rs.7,50,85,700/-, investments in foreign companies Rs.2,62,25,910/- and investment in properties Rs.64,78,48,837/- and remaining represented the investments in share and securities of Rs.64,78,48,837/-. We further note that inventories as per note No.12 is Rs.75,74,88,040/-. We find merit in the contentions of the Ld. A.R. that investments in growth funds are not includible while computing the average investments for calculating the disallowance under section 14A as no dividend is declared in case of growth funds and whatever gain is made that is taxable under the Act. Similarly, the dividend received from foreign companies is liable to tax and consequently these investments have to be excluded. Lastly, the investments in properties also did not form part of the investments for the purpose of calculation of section 14A disallowance as there is no dividend declared on the investment in properties but appreciation realized upon sale is offered to tax. Therefore, all these three investments in growth funds, in foreign companies and in properties have to be excluded while calculating the average investments. Similar adjustment are required to be made in the figures of investments in the corresponding previous year ended on 31.03.02013 as stated hereinabove. We note that the average investments come to Rs.135,63,19,992.50. Similarly, the average own funds the calculation whereof is extracted above are Rs.136,10,03,859/-. It is apparent from the above calculation that assessee's average own funds are more than the average value of investments and in our considered opinion, no disallowance is called for under rule 8D2(ii) of the Act. The case of the assessee is squarely covered by the decisions as referred to above by the Ld. A.R. in support of his arguments. In

the case of CIT vs. HDFC Bank Ltd. (supra) and it has been held that where the interest free funds as well as own funds employed in the business are more than the investments in the shares and securities yielding exempt income, in that case no disallowance is to be made. Similar ratio has been laid in another decision in the subsequent decision in the case of HDFC Bank vs. CIT (2016) 383 ITR 529 by the Hon'ble Jurisdictional High Court that where assessee's own funds are more than the investments made in shares and securities no disallowance is to be made under section 14A. In view of the facts of the instant case and the ratio laid down by the Jurisdictional High Court we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance of Rs.1,24,67,062/- as made under rule 8D2(ii)." (Emphasis Supplied)

10. On perusal of the above, it is clear that the Tribunal has deleted the additions made under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules by following the judgments of the Jurisdictional High Court. The Tribunal has excluded Investment in Growth Funds as well as Investment in Foreign Companies while computing the Average Value of Investment. The Average Own Funds have been computed as aggregate of Share Capital, Reserves & Surplus, Trade Payables and Loans from Directors. Accordingly, the working of Value of Investment and Average Own Funds as on 31.03.2015 is as under:

(A) Value of Investment

Particulars	As on 31.03.2015 (INR)	Paper Book Page No.
Investments (Note 9)	41,23,94,161	16,22
Add: Inventories (Note 12)	1,87,56,84,419	16,23
Less: Investment in Growth Funds (Subhkam Growth Fund)	7,50,85,700	22,46

Less: Investment in Foreign Companies (Subhkam Overseas)	262,25,910	22,46
Less: Other Investment/Inventories yielding taxable income	40,48,61,723	97,100
<b>Investment as on 31.03.2015</b>	<b>1,781,905,247</b>	

(B) Own Funds

Particulars	As on 31.03.2015 (INR)	Paper Book Page No.
Share Capital	1,99,00,000	16
Add: Reserve and Surplus	1,67,25,14,308	16
Add: Trade Payables	1056,59,036	20
Add: Unsecured Loan from Director	195,00,000	20
<b>Own Funds as on 31.03.2015</b>	<b>1,81,75,73,344</b>	

11. As per the para 9 of the order of the Tribunal in ITA No. 55 & 5682/Mum/2018 pertaining to Assessment Years 2013-14 and 2014-15 reproduced hereinabove, the Value of Investment and Own Funds as on 31.03.2014 stood at INR 1,40,53,36,877/- and 1,41,07,67,102/-, respectively. The Value of Investment and Own Funds as on 31.03.2015, computed hereinabove, stood at INR 1,781,905,247 /- and INR 1,81,75,73,344/-, respectively. Accordingly, the Average Value of the Total Investments and Average Value of Own Funds to be considered for the purpose of Section 14A of the Act for the Assessment Year 2015-16 comes to INR 1,59,36,21,062/- and INR 1,61,41,70,223/-, respectively. The Average Value of Own Funds is more than the Average Value of the Investments. Therefore, respectfully following the Tribunal's order in Appellant's own case for the Assessment Years 2013-14 and 2014-15 (ITA No. 55 & 5682/Mum/2018), we allow the present appeal and delete the addition made by the AO under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. We note that while the expression 'additional *disallowance*

*made by the AO* has been used in the grounds of appeal, the amount of disallowance has been stated as INR 1,13,46,239/-. This is factually incorrect, as the additional disallowance made by the AO was INR 1,01,79,883/- in terms of Section 14A of the Act read with Rule 8D(2)(ii) as discussed in para 4 above. Accordingly, the aforesaid additional disallowance of INR 1,01,79,883/- made by AO and confirmed by CIT(A) in terms of Section 14A of the Act read with Rule 8D(2)(ii) of the Rules stands deleted.

12. In view of the above, Ground No. 1 and Ground No. 5 are allowed while Ground No. 2,3 & 4 are disposed off as being infructuous.
13. In the Result, the present appeal is partly allowed.

Order pronounced on 11.05.2022.

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 11/05/2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai