

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Shri Yogesh Kumar US, Judicial Member

ITA No. 3755/Del/2019 : Asstt. Year : 2016-17

Addl. CIT, Special Range-9, New Delhi	Vs	Tourism Finance Corporation of India Ltd, 13 th Floor, IFCI Tower, 61, Nehru Place, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAC0706D		

Revenue by : None

Assessee by : Sh. Sanjay Kumar, Sr. DR

Date of Hearing: 17.05.2022

Date of Pronouncement: 27.06.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-9, New Delhi dated 28.02.2019.

2. The revenue has raised the following grounds of appeal:-

"1. *On the facts and circumstances of the case the CIT(A) erred in deleting disallowance of Rs. 4,02,82,344/- u/s 14A by holding that disallowance u/s 14A cannot exceed exempt income without appreciating that in none of the judgments relied upon by the CIT(A), the Circular NO. 5/2014 has been declared illegal.*"

3. During the year under consideration, assessee has earned dividend of Rs.76,13,896/- and interest on tax free bonds of Rs.4,38,00,000/- and claimed the same as exempt income. During assessment proceeding, the assessee was asked to explain as to

why the expenses relating to earning of the exempt income be not disallowed keeping in view the provision of section 14A r.w.r 8D. By replies dated 30.11.2018 the assessee has contended that it has not invested any interest bearing funds towards the making of investments and therefore the provisions of Rule 8D(2)(i) and 8D(2)(ii) are not applicable in its case.

4. The assessee admitted that disallowance under Rule 8D(2)(iii) is applicable and accordingly a disallowance of Rs.33,57,847/- has already been made in the computation while filing the Return of Income for the AY 2016-17.

5. The Id. CIT(A) considered the fact of the case and contention of the appellant. The Id. CIT(A) held that the disallowance of expenses u/s 14A r.w. Rule 8D is in respect of expenses related to tax exempt income.

6. From a plain reading of section 14A(1), it is clear that the objective behind the provision is to disallow only such expense which is relatable to exempt income. While there is no doubt that the method for determining amount of expenditure in relation to income not includible in total income is available in Rule 8D of the IT Rules, 1962, the case of the appellant is that it has already disallowed Rs.33,57,847/- as expense for earning of exempt income of Rs.5,14,13,896/-. It was held that the AO has neither stated that this *suo moto* disallowance made by the appellant is not adequate nor found any fault in the working of the appellant. The AO is required to first satisfy himself/herself before embarking on the disallowance u/s 14A r.w. Rule 8D.

7. The issue of applicability of section 14A has been decided by the Hon'ble Supreme court in the case of Maxopp Investment Ltd vs. Commissioner of Income Tax, New Delhi, 91 taxmann.com 154 (SC) (2018), wherein it has inter alia held as under:

"32. In the first instance, it needs to be recognized that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.

33. There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assesseees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

34. *Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assesseees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share & Stock Brokers (P.) Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.*

"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..

The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."

8. In view of the guiding principle laid down by the Hon'ble Apex court in the above judgment, the Id. CIT(A) held that it is imperative that expenditure may be apportioned relating to

investment which income is/ does not form part of the total income irrespective of nature and purpose of investment. Therefore, apportionment of the expenditure has to be computed for the disallowance u/s 14A of the Act.

9. We have gone through the record.

10. The apportionment of expense u/s 8D (2)(i) & (ii) was ascertained. It was noted from the financials statement for the FY 2015-16 relevant to AY 2016-17 that the appellant had interest free fund in the form of share Capital and Reserves of Rs.514.05 Cr. which were more than the investment eligible for earning exempt income of Rs.87.82 Cr. by Rs.426.23 Cr. There was net addition of Rs. 34.95 Cr. during the year in Share Capital and Reserves as at 31.03.2016 of Rs.514.05 Cr. as compared to 31.03.2015 of Rs.479.10 Cr.

11. There was no dispute that the investments which have given exempt income were made in the past financial years. It is proved that appellant had much more interest free funds in the form of reserves compared to investment. Hence, there is no case of apportioning the interest expenditure for the purpose of disallowance u/s 14A r.w. Rule 8D(2)(i)&(ii).

12. We are in agreement with the decision of the Id. CIT(A) who relied on the case of CIT v. HDFC Bank Ltd. 366 ITR 505 (Bombay) wherein Hon'ble Court has:

"We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities & Power Ltd. (supra). The finding of fact given by the IT AT in the present case is that the Assessee's own funds

and other non-interest bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities & Power Ltd. (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee."

13. Hence, we decline to interfere with the decision of the Id. CIT(A).

14. Regarding computation of disallowance u/R 8D(2)(iii), it has been held that value of only those investment which gives exempt income be considered for computation. The Hon'ble jurisdictional High Court in the case of ACB India Limited Vs. Assistant Commissioner of Income Tax held as under:

"4. The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of Rs. 38,61,09,287/- with the figure of Rs. 3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.

5. In view of the above reasoning, the findings of the ITAT and the lower authorities are hereby set aside. The appeal is allowed and the matter is remitted to work out the tax effect to the AO who shall do so after giving due notice to the party."

15. It is not in dispute that the assessee has made a *suo moto* disallowance of Rs.33,57,847/- which is 0.5% of the average

value of exempt income yielding investment at Rs.67,15,69,314/-. Since, the disallowance has already been made by the assessee @ 0.5% on the income yielding investments, we decline to interfere with the order of the Id. CIT(A).

16. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 27/06/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 27/06/2022

Ajay Kumar Keot, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR