

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 139/CHNY/2020

निर्धारण वर्ष /Assessment Year: 2012-13

**M/s.Maxivision Eye Hospital  
Pvt. Ltd.,**

(formerly known as Maxivision  
Laser Center Pvt. Ltd.,)  
No.25, Trivitron Sapthagiri  
Bhavan, 4<sup>th</sup> Street,  
Abhiramapuram,  
Chennai – 600 035.

**The DCIT,**  
vs. Corporate Circle 4(1),  
Chennai.

**PAN: AACCM 1693G**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR. V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 22.07.2022

घोषणा की तारीख/Date of Pronouncement

: 22.07.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-8, Chennai in ITA No.252/15-16 dated 28.11.2019. The assessment was framed by the ACIT, Circle 16(2), Hyderabad for the assessment years 2012-

13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 18.02.2015.

2. The only issue raised by assessee in this appeal is as regards to the order of CIT(A) confirming the action of AO in disallowing expenses i.e., interest expenses under Rule 8D(2)(ii) amounting to Rs.32,06,464/- and administrative expenses being 0.5% of average value of investment under Rule 8D(2)(iii) at Rs.3,50,442/- thereby total disallowance of Rs.35,56,906/- relatable to exempt income by invoking the provisions of section 14A of the Act. For this, assessee has raised the following grounds:-

1) Disallowance under Section 14A -Rs.35,56,906/-:

The Appellant has not earned any dividend income during the relevant Previous Year

In this regard, the appellant relies upon the decision of M/s. Chettinad Logistics Private Limited Vs Commissioner of Income Tax, Madras High Court vide T.C.A.No.24 of 2017 dated 13.03.2017 wherein it has been held that the disallowance under section 14A does not arise if there is no exempt income. The Special Leave petition filed in the case of M/s. Chettinad Logistics Private Limited Vs Commissioner of Income Tax has been dismissed by the Hon'ble Supreme Court.

The same issue has already been allowed in the Appellant's own case by the Hon'ble CIT Appeals - 8 vide ITA Nos.51 &249/2016-17 dated 08.05.2017 for Assessment year 2013-14 &2014-15. The CIT Appeal has ignored the same and confirmed the order of the Assessing Officer.

3. At the outset, the Id.counsel for the assessee stated that the assessee has not earned any exempt income and has not claimed any income in its computation of income. The Id.counsel for the assessee filed financial statements and also made claim before AO that the assessee has not earned any exempt income. Even before CIT(A), the assessee claimed that the assessee has not earned any exempt income and the CIT(A) recorded this fact in para 5 and the relevant portion of para 5 reads as under:-

“In response to the disallowance, the assessee has now claimed that it has not received any dividend during the year and hence the disallowance u/s 14A is not called for. The assessee has made the following submissions.

*The Assessee has not received any dividend income during the year Therefore, the disallowance under section 14A will not arise. To substantiate the same, we hereby attach Financials. Refer Note No.2.18 "Other Income" wherein it is clear that dividend income has not been received by the Assessee.*

*Therefore, disallowance under section 14A does not warranted. We rely upon the decision of M/s.Chettinad Logistics Private Limited vs. Commissioner of Income Tax in the High Court of judicature at Madras vide T.C.A. No.24 of 2017 dated 13.03.2017 wherein it held if there is no dividend income the disallowance under section 14A will, not arise.*

The CIT(A) confirmed the disallowance by considering the judgment of Hon'ble Supreme Court in the case of Maxopp Investments Ltd., vs. CIT, (2018) 402 ITR 640 (SC) and by stating as under:-

“The decisions of the Hon'ble Supreme Court in the cases mentioned in paragraph 06 above also do not give any relief to the assessee with respect to the absence of tax exempt income in our particular year. It is also absurd to disallow the expenditure for one year for the presence of tax exempt

income and to allow expenditure for the absence of tax exempt income in another year from the same investments. In view of the same, it is held that the decision of the Hon'ble Madras High Court in M/s. Redington India Ltd is held as overruled by the decisions of the Apex Court on section 14 in M/s Walfort Share and Stock Brokers P Ltd. (326 ITR 1) (SC), M/s. Godrej & Boyce Manufacturing Co. Ltd. (394 TR 449 (SC) as well as M/s. Maxopp Investments Ltd (Taxsutra 115 SC. 2018), which have had similar facts of tax exempt assets not yielding any income in the respective AYrs. Considering the same, the action of the Assessing Officer in disallowing an amount of Rs.35,56,906/- u/s 14A is sustained. The grounds are rejected.

Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Id.counsel for the assessee stated that the issue is covered by the decision of Jurisdictional High Court in the case of CIT v. Chettinad Logistics (P) Ltd., (2017) 80 taxmann.com 221, wherein the Hon'ble High Court considering the decision of Co-ordinate Bench of Hon'ble Madras High Court in the case of Redington (India) Ltd., vs. Addl.CIT, (2017) 77 taxmann.com 257 held as under:-

11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s.Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.

11.1.A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2.As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income

was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.

11.3.Pertinently, the Division Bench in M/s.Redington (India) Limited case has repelled this precise argument.

12.The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1.The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2.While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3.The reasoning of the Division Bench is contained in the following part of the judgment:

4.The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7.Per contra, Sri.T.Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8.He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is

a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9.We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971) (82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income Tax vs. Walfort Share and Stock Brokers (P) Ltd (2010) 326 ITR 1

'... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10.The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in

law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11.The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far. (emphasis is ours)

4.1 The Id.counsel also stated that this has been affirmed by the Hon'ble Supreme Court in the case of CIT vs. Chettinad Logistics (P) Ltd., (2018) 95 taxmann.com 250 (SC), wherein SLP was dismissed on the ground of delay as well as on merits.

5. On the other hand, the Id.Senior DR Shri AR.V. Sreenivasan, Addl.CIT relied on the Tribunal decision of Guwahati Bench, virtual hearing at Kolkata in the case of ACIT vs. Williamson Financial Services Ltd., in ITA Nos.154 to 156/Gau/2019, order dated 06.07.2022, wherein in the Finance Act, 2022 amendment is brought in section 14A of the Act w.e.f. 01.04.2022 is held to be retrospective. The Id.Senior DR argued that the Guwahati Bench has considered the provisions of section 14A of the Act was introduced in the year 2001 with retrospective effect from the year 1962 to state that no deduction shall be granted towards an expenditure incurred in relation to income which does not form part of the total income. The method of identifying the expenditure

incurred is prescribed under Rule 8D of the Income Tax Rules, 1962 (hereinafter the Rules). He argued that from its inception the applicability of this provision has always been a subject matter of litigation and one such point that has been often debated is regarding the disallowance of expenditure in the absence of exempt income. Finally, the Finance Act, 2022 has inserted an explanation to section 14A to clarify that bereft exempt income being earned in any year, the disallowance u/s.14A of the Act will still be attracted. The Act further proposes to apply the amendment retroactively thereby changing the positions laid down by the courts taken in favour of taxpayers to date. The Id.Senior DR stated that the Guwahati Bench of this Tribunal has held Explanation inserted by the Finance Act, 2022 as retrospective and according to Guwahati Bench, the Explanation seeks to clarify the position that the disallowance of expenditure relatable to exempt income is not dependent upon actual earning of exempt income.

6. Today, during the course of hearing it was brought to the notice of the Id. Senior DR that this issue has been adjudicated by the Hon'ble High Court of Delhi in the case of PCIT vs. Era Infrastructure (India) Ltd., in ITA 204/2022 & CM Appl.31445/2022, order dated 20.07.2022, considering the amendment brought in by

the Finance Act, 2022 and Explanation inserted to section 14A of the Act held as prospective by observing as under:-

5. However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced herein below:

*“4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.*

**5. This amendment will take effect from 1st April, 2022.**

*6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*

**7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.”**

(emphasis supplied)

6. Furthermore, the Supreme Court in *Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717* has held that a retrospective provision in a tax act which is “for the removal of doubts” cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. The relevant extract of the said judgment is reproduced herein below:

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7. The aforesaid proposition of law has been reiterated by the Supreme Court in ***M.M Aqua Technologies Ltd. V. Commissioner of Income Tax, Delhi-III, 2021 SCC OnLine SC 575***. The relevant portion of the said judgment is reproduced herein below:-

.....  
 .....

8. Consequently, this Court is of the view that the amendment of Section 14A, which is “*for removal of doubts*” cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in ***Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359*** and ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1***, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in ***PCIT vs. IL & FS Energy Development Company Ltd*** (supra) and ***Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33***.

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of ***PCIT vs. IL & FS Energy Development Company Ltd*** (supra).

7. After hearing rival contentions and going through the decision of Hon’ble Delhi High Court in the case of Era Infrastructure (India) Ltd., *supra*, we are of the view that the explanation inserted in the provisions of section 14A of the Act by the Finance Act, 2022 is prospective and not retrospective. Accordingly, since the assessee has not earned any exempt income, no disallowance can be resorted

by invoking the provisions of section 14A of the Act read with Rule 8D(2) of the Rules. The appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22<sup>nd</sup> July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 22<sup>nd</sup> July, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |