

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.1059/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2015-16)

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आयकर अपील सं/ I.T.A. No.1062/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं/ I.T.A. No.1061/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2014-15)

Ring Plus Aqua Ltd. D-3/4, Stice, Sinnar Shirdi Road, Musalgaon, Nashik- 422003, Maharashtra, India.	बनाम/ Vs.	DCIT, Central Circle-8(1) 6 th Floor, Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR3220M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Hitan Chande	
Revenue by:	Smt. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 12/09/2022

घोषणा की तारीख /Date of Pronouncement: 31/10/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai dated 17.03.2021 for AY. 2013-14 to AY. 2015-16.

2. At the outset, both the parties agrees that there is only one (1) issues raised by the assessee in all the three (3) assessment years. And since the sole issue in all the three (3) appeals are the same except for the sum/figures, we take up the appeal of the assessee for AY. 2013-14



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as the lead case and the decision of which will be followed in the other two (2) assessment years.

3. The grounds of appeal of the assessee for AY. 2013-14 is as under:-

“1. On the facts and circumstances of the case and in law, the Hon’ble CIT(A) erred in upholding the disallowance made by Ld. AO u/s 14A of the Act amounting to Rs.23,40,879/-. The appellant prays that the said action of Hon’ble CIT(A) may please be held as bad-in-law and be deleted.”

4. Brief facts, the assessee has received exempt dividend income to the tune of Rs.53,50,483/- and the AO asked the assessee as to why the disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter “the Act”) r.w. Rule 8D of the Income Tax Rule, 1962 (hereinafter “the Rules”) be not resorted to disallow the expenditure incurred for earning the exempt income. Even though, the assessee brought to the notice of the AO that it has suo-motto disallowed Rs.61,738/- u/s 14A of the Act and claimed that no other expenditure was incurred for earning the exempt income, but the AO did not accept the claim of the assessee. Therefore, he computed the disallowance under Rule 8D of the Rules. And the AO disallowed 0.5% of Rs.48,05,23,500/- (Rule 8D (2)(iii) of the Rules) i.e. Rs.24,02,617/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the same by holding as under: -



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“6.4.4 The appellant has submitted that they have not incurred any direct expenditure in relation to earning dividend income and they have not incurred any interest expenditure which is attributable to exempt income. In this respect it is found that the Ld. AO has not made any disallowance on account of direct expenditure under Rule 8D(2)(i) and has not made any disallowance out of interest expenses under Rule 8D(2)(ii). So the appellant cannot have any grievance on these accounts

6.4.5 The appellant has also submitted that the Ld.CIT(A) in appellant's own case for AY. 2012-13 has allowed relief to the appellant on identical facts of the case and placed reliance on the same. From perusal of the said decision of the Ld.CIT(A) in appellant's own case for AY 2012-13, it is observed that therein he has not considered the above referred decisions of the Hon'ble Gujarat High Court in the case of Devarsons Industries P Ltd, reported in 84 taxmann.com 244 and that of the Hon'ble Punjab & Haryana High Court in the case of Punjab Tractors Ltd reported in 78 taxmann.com 65. Further, the Ld CIT(A) in AY. 2012-13 had given considerable emphasis on the issue that the provisions of sec 14A rw Rule 8D cannot be invoked in respect of investments which are strategic in nature. However, the Hon'ble Supreme Court in above referred case of Maxopp Investment Ltd vs CIT reported in 402 ITR 640 has held that the dominant purpose of investment is of no consequence for applicability of provisions of section 14A r.w. Rule 8D. In view of the above discussions, with due respect to my Ld Predecessor, it is held that the decision



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rendered by him in A.Y. 2012-13 in appellant's own case cannot be followed.

6.4.6 Further, the appellant has submitted that only such investments should be considered which have yielded exempt income during the year, while computing disallowance u/s 14A of the Act and has placed reliance on the above referred decision of the Hon'ble ITAT, Mumbai in the case of DCIT vs Anand Rathi Capital Advisors P Ltd. In this respect, it is pertinent to note that neither before the Ld. AO nor before the undersigned has the appellant submitted scrip/security wise details of exempt income earned during the year and investment made in such scrips/security. Further, the Hon'ble ITAT, Mumbai has rendered the said decision in the case of DCIT vs Anand Rathi Capital Advisors P Ltd in ITA No. 7472/Mum/2016 on 03.01.2018 and hence had no occasion to consider the above referred decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd, which was rendered on 12.02.2018, i.e. subsequent to said decision of the Hon'ble Mumbai Tribunal. In view of above discussions, the various contentions raised by the appellant in this respect are herewith rejected. Therefore, the disallowance computed by the Ld. AO u/s 14A of the Act Rs.7,25,580/- is CONFIRMED. Accordingly, the Ground No.1 raised in appeal is DISMISSED.”

5. Aggrieved by the aforesaid action of Ld CIT(A), the assessee is before us.



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6. We have heard both the parties and perused the records. We note that the assessee had earned exempt income to the tune of Rs.53,50,483/- and disallowed suo-motto Rs.61,738/- for earning the exempt income. The AO applying the Rule 8D(2)(iii) of the Rules has disallowed Rs.24,02,617/-. On appeal, the Ld. CIT(A) dismissed the appeal of the assessee. Aggrieved, by the action of the Ld. CIT(A), the assessee is before us.

7. Before us, the assessee contention was based on the decision/ratio of this Tribunal in the case of DCIT Vs. Anand Rathi Capital Advisor Pvt. Ltd. (ITA. No.7472/Mum/2016 dated 03.01.2018) wherein the Tribunal held that while applying Rule 8D(2)(iii) of the Rule, 0.5% of the investment which have yielded exempt income during the year should only be considered. However, it is noted that the Ld. CIT(A) refused to deal with this preposition on the ground that the assessee failed to submit the details of the scrips/security wise investment which yielded the exempt income during the year. Further, according to the Ld. CIT(A), the decision of the Tribunal (Anand Rathi Capital Advisor Pvt. Ltd.) (supra) was rendered before the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (order dated 12.02.2018). Therefore, the Ld. CIT(A) refused to look into the validity of the claim made by the assessee on the strength of decision of this Tribunal in Anand Rathi Capital Advisor Pvt. Ltd. (supra).



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8. However, before us, the assessee has spelled out the details of the scrips/securities and the amount invested by it from which the assessee has earned the exempt income. From the details submitted we note that the assessee has received exempt income only from two (2) scrips i.e. M/s. Ring Plus Aqua Ltd. and M/s. Birla Sunlife Income Fund and brought to our notice the following relevant facts in respect of investment from these scrips which are as under: -

AY	Suo-moto disallowance u/s 14A (3% of CTC of finance dept)	Further u/s 14A r.w.r 8D(2)(iii) vide AO	Tax effect	Exempt income	Average value of investment	Further disallowance actual	Further disallowance u/s 14A	Relief in 14A disallowance	Tax effect
2013-14	61,738	2,340,879	759,498	5,350,483	480,523,500	96,339,369	419,959	1,920,920	614,691
2014-15	61,738	1,578,610	512,180	5,256,511	328,069,500	77,932,993	327,927	1,250,683	400,219
2015-16	61,738	663,842	215,384	3,729,010	145,916,000	38,380,624	130,165	533,677	170,777
Total		4,583,331	1,487,062				878,051	3,705,280	1,185,690

No disallowance made u/s 14A r.w.s 8D(2)(iii)

Value of Investments deriving exempt income

Particular	As on 1.4.2012	As on 31.3.2013	As on 31.3.2014	As on 31.3.2015
Birla Sunlife Income Fund (Daily Dividend plan) Exempt income record as AY. 2013-14 AY. 2014-15 AY. 2015-16				-
Saraswat Co-op Bank Ltd. Exempt Income record in AY. 2014-15				-
Total	113,664,000	79,034,738	76,831,248	-

9. The Ld. AR also brought to our notice that the aforesaid details were brought to the notice of the AO and Ld. CIT(A) during the proceedings before them. Any way the aforesaid fact can be verified



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by AO, while computing the disallowance under Rule 8D(2)(iii) of the Rules.

10. Coming to the contention of the Ld. CIT(A) that the decision of the Tribunal in the case of (Anand Rathi Capital Advisor Pvt. Ltd. (supra) was rendered before the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra), we are of the opinion that the Ld. CIT(A)'s contention is misplaced. Rather than discarding the decision of the Tribunal in Anand Rathi Capital Pvt. Ltd. after the decision of the Hon'ble Supreme Court Maxopp Investment Ltd. (supra), the Ld. CIT(A) ought to have stated the reason for saying so. Unfortunately, Ld. CIT(A) has not made any attempt to do so and has whimsically discarded the case law, which action of Ld CIT(A) cannot be countenanced. The Ld. DR before us, could not point out any observation/discussion of the Hon'ble Supreme Court in Maxopp Investment Ltd. (supra), (be it obitor or ratio) which could upset the ratio of the decision of this Tribunal in Anand Rathi Capital Pvt. Ltd. Therefore, we direct the AO to consider only the investment from which assessee yielded exempt income while computing disallowance under Rule 8D(2)(iii) of the Rules.

11. Therefore, in the light of the aforesaid discussion, we set aside the impugned order of the Ld. CIT(A) and restore the issue back to the file of the AO with the limited direction to verify whether the assessee's working of investments yielding exempt income is correct



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or not i.e. 0.5% of the investment from which assessee yielded exempt income. And if it is found to be correct then no more disallowance is required as per Rule 8D(2)(iii) of the Rules. In the light of the aforesaid action for AY. 2013-14, the same action would be applicable mutatis mutandis to other two appeals i.e. for AY. 2014-15 & AY. 2015-16.

12. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 31/10/2022.

Sd/-

(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/10/2022.
Vijay Pal Singh, (Sr. 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//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai