

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3930/Del/2019  
Asstt. Year: 2013-14

Ashok Kumar Chitlangia 43 G.B. Road, Delhi - 110 006 PAN AAEPCC0279M (Appellant)	Vs.	ITO Ward 46(1) New Delhi.  (Respondent)
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Assessee by:	Shri M.P. Rastogi, Advocate Shri P.N. Shastri, Advocate
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing	24.08.2022
Date of pronouncement	06.12.2022

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal by the assessee is directed against the order dated 15.02.2019 of the Ld. Commissioner of Income Tax (Appeals) - 16, New Delhi ("**CIT(A)**") pertaining to assessment year ("**AY**") 2013-14.

2. The assessee has taken the following grounds of appeal:-

"1. *The Learned CIT (Appeals) has erred in not deleting the disallowance u/s 14A of the Act sum of Rs 2,68,168/- out of interest allocated on surmises and conjectures by treating even Public provident fund deposits as investments for earning tax exempt income. "*

An alternate ground No. 2 has also been taken which reads as under:-

*“2. The Ld. CIT(Appeals) has erred in not deleting the disallowance of Rs. 2,68,168/- out of interest under rule 8D(iii) r.w.s. 14A ignoring that the assessee has capital and interest free fund far in excess of investments.”*

3. Briefly stated the facts are that the assessee individual is engaged in the wholesale and retail trading of machinery and hardware parts etc.. For A.Y 2013-14 the assessee e-filed his return declaring income of Rs. 11,03,960/- on 16.10.2013. His case was selected for scrutiny under CASS. The Ld. Assessing Officer (**“AO”**) found that as per balance sheet as on 31.03.2013 the assessee had assets in the form of shares worth Rs. 11,54,812/- and balance in PPF of Rs. 1,54,116/-. He further found that the assessee had claimed interest payment of Rs. 24,62,422/- on borrowed capital during the year. Vide show cause dated 11.03.2016 he required the assessee to give detailed working of disallowance under section 14A of the Income Tax Act, 1961 (**the “Act”**) r.w. rule 8D of the Income Tax Rules, 1962 (**“The Rules”**). In his reply dated 22.03.2016 the assessee stated that the investment in equity shares of SKF India Ltd. are right from the year 2000-01 onward and since January, 2005 these investments in shares are carried forward.

4. The explanation of the assessee was not acceptable to the Ld. AO. According to him the claim of the assessee that he did not incur any expenditure in relation to income which does not form part of total income under the Act is not sustainable. The case of the assessee is covered under section 14A(3) of the Act and thus the provisions of section 14A(2) of the Act would apply. He, accordingly worked out the disallowance as per Rule 8D of the Rules which amounted to Rs. 3,27,821/-. However, he restricted the disallowance to Rs. 2,68,168/- only as he had separately disallowed the assessee’s claim of interest expenditure of Rs. 24,62,422/- for the reasons recorded in para 3 of his order. Accordingly, the Ld. AO completed the assessment on total income of Rs. 38,34,550/- under section 143(3) of the Act on 31.03.2016.

5. The assessee appealed before the Ld. CIT(A) who deleted the addition of Rs. 24,62,422/- on account of interest disallowed under section 36(i)(iii) of the Act. Regarding disallowance under section 14A of the Act r.w. rule 8D of the Rules, the Ld. CIT(A) gave following direction to the Ld. AO:-

*“In view of the principle enunciated by the Apex court in the case of Maxopp as detailed above, it is clear that expenditure attributable only to exempt income is to be considered for calculating the disallowance u/s 14A. A similar principle was enunciated by the jurisdictional High Court in the case of **M/s ACB India Ltd. vs ACIT (ITA No 615/2014 dated 24.03.2015)** wherein it was held that for the purposes of calculation of average value of investments under Rule 8D only the investments yielding non-taxable income have to be considered and not all investments. Therefore, the value of investment yielding only non-taxable income has to be taken for purposes of calculation of disallowance u/s 14A. The AO is directed accordingly. The AO however, must ensure that if the recomputed disallowance is found to be less than the suo motu disallowance made by the appellant, the same may be taken at a minimum for the reason that an admitted disallowance by the appellant cannot be reduced.”*

6. The assessee is in appeal before the Tribunal.

7. The main ground No. 1 relates to disallowance of Rs. 2,68,168/- under section 14A of the Act which has not been deleted by the Ld. CIT(A). In the alternate ground No. 2 the assessee's contention is that while applying Rule 8D(iii) r.w.s. 14A, the assessee's capital and interest free funds which were far in excess of investment have not been considered.

8. The Ld. AR reiterated the same arguments which were advanced before the Ld. CIT(A) whereas the Ld. Sr. DR supported the order of the Ld. CIT(A).

9. We have given our careful thought to the rival submissions. On page 10 of the appellate order, the Ld. CIT(A) observed that during the year under consideration the assessee earned tax free dividend income of Rs. 26,128/- and Rs. 1,454/- from UTI. The Ld. AO recorded the finding that the assessee cannot earn dividend without management of the investment. Para 4.5 of AO's order refers. There are numerous precedents which support the view that even if the assessee claims that he has not incurred any expenditure in

earning dividend income, the provisions of section 14A of the Act r.w. Rule 8D of the Rules would still apply, if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee. Both the Ld. AO as also the Ld. CIT(A), having regard to the accounts of the assessee reached the conclusion that the claim of the assessee that he did not incur any expenditure in relation to income which does not form part of the total income is not sustainable in the eye of law. If that be so, in our opinion, the Ld. CIT(A) was perfectly justified in holding that the provisions of section 14A of the Act r.w. Rule 8D of the Rules are attracted to the case of the assessee. We, therefore reject the ground No. 1 of the assessee.

10. As regards the alternate ground No. 2, it does not survive as the Ld. CIT(A) has already set aside the matter and restored it to the file of the Ld. AO with direction to him to decide afresh the quantum of disallowance in the light of the Hon'ble Supreme Court's judgment in Maxopp Investment Ltd. vs. CIT (2018) 91 taxmann.com 154(SC). We, however observe that the assessee has not made any suo-moto disallowance, therefore there will not be any occasion to limit the disallowance at a minimum as stated by the Ld. CIT(A) in the last sentence of his direction extracted above. In this view of the matter, the alternate ground No. 2 is also rejected.

11. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court on 6<sup>th</sup> December, 2022.**

sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 06 /12/2022

***Veena***

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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