

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2080/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2016-17**)

Shriram Capital Ltd. Shriram House, 1 st Floor, No.4, Burkit Road, T. Nagar, Chennai – 600 017.	बनाम / Vs.	DCIT Corporate Circle-6(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AABCS-2726-B		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Raghav Rajeev Menon (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Darzakhum Songate (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	17-10-2022
घोषणा की तारीख / Date of Pronouncement	:	06-12-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 16-04-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 28-12-2018. The sole grievance of the assessee is confirmation of disallowance u/s 14A.
2. The Ld. AR, at the outset, submitted that the issue is recurring in nature and similar issues stood adjudicated by Tribunal in assessee's

own case for AYs 2012-13 & 2014-15 (ITA Nos. 3168/Chny/2018 & ors. order dated 18.02.2022). Similar view is stated to have been taken by the Tribunal for AY 2017-18, ITA No.941/Chny/2020 order dated 29.07.2022. The copies of the orders have been placed on record. The Ld. AR submitted that without recording objective satisfaction, Ld. AO could not have made disallowance u/s 14A r.w.r. 8D. The aforesaid facts could not be controverted by revenue. Having heard rival submissions, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in the business of making investments.

3. Assessment Proceedings

3.1 The assessee earned tax free income of Rs.185.84 Crores and made suo-motu disallowance of Rs.9.66 Lacs of administrative expenditure in the computation of income. However, Ld. AO held that the disallowance has to be computed by applying the procedural provisions laid down in Rule 8D. The assessee submitted that the provisions of Rule 8D would not be attracted considering the nature of assessee's business. The assessee also submitted that only income yielding investments are to be considered while computing the disallowance. Lastly, no such disallowance could have been made in Book Profits u/s 115JB.

3.2 However, rejecting the same and applying Rule 8D, Ld. AO computed aggregate disallowance of Rs.1139.90 Lacs and added the same while computing income under normal provisions as well as while computing Book Profits u/s 115JB. The Ld. CIT(A), relying upon first appellate order for AY 2014-15, confirmed the action of Ld. AO. Aggrieved, the assessee is in further appeal before us.

4. Our findings and Adjudication

4. We find that Ld. CIT(A) has relied upon first appellate order for AY 2014-15 which stood reversed by Tribunal in ITA Nos. 3168/Chny/2018 dated 18.02.2022 as under: -

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the case law relied on by the assessee. In this case, the assessee is engaged in the business of investment promotion and during the year, the assessee has earned dividend income of ₹.17,10,42,084/-. In the return of income, the assessee has suo motu disallowed ₹.8,000/- under section 14A of the Act. However, the Assessing Officer disallowed an additional amount of ₹.34,28,05,564/-. However, while making additional disallowance under section 14A of the Act, the Assessing Officer has not recorded any satisfaction as to how the claim of the assessee was incorrect and had resorted to the provisions under section 14A r.w. Rule 8D. By relying upon decision of the Tribunal in assessee's own case for the assessment year 2013-14, wherein, the decision in the case of Maxopp Investment Ltd. v. CIT (supra) has been followed, the Id. Counsel for the assessee has prayed for following the order of the Tribunal for assessment year under appeal. We have gone through the order of the Tribunal in assessee's own case for the assessment year 2013-14 in I.T.A. No. 1766/Chny/2019 vide order dated 16.12.2019, wherein, in similar facts and circumstances an identical issue was subject matter in appeal before the Tribunal and the Tribunal has observed and held as under:

"7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to disallowance u/s14A of the Act. Admittedly, assessee made investments which yielded dividend income of Rs.61,44,03,001/- and investments were made in subsidiary companies for strategic purpose. Admittedly, assessee itself had offered suo motu disallowance of Rs.73,602/- u/s.14A of the Act. The provisions of Sub Section (2) of Section 14A of the Act provides that resort to provisions u/s.14A of the Act can be made only if he is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred to earn exempt income. Therefore, it is mandatory on the part of the Assessing Officer to record a satisfaction as to correctness or otherwise of the claim of the assessee regarding expenditure incurred to earn exempt income. In the present case, assessee suo motu offered disallowance of Rs.73,602/-. From the perusal of the assessment order, it is clear that there is no findings by the Assessing Officer as to the correctness or otherwise of the claim of the assessee that only an expenditure of Rs.73,602/- was incurred. In this absence of any findings by the Assessing Officer, resort to provisions of Section 14A of the Act cannot be made as ruled by Hon'ble Bombay High Court in the case of Reliance Capital Asset Management Ltd (supra) and the SLP against this judgment was dismissed by Hon'ble Supreme Court in 259 Taxman 83. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) has upheld this principle by holding as under:-

“41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer”.

Recently, the Co-ordinate Bench of the Tribunal to which one of us i.e. the Accountant Member is the author of the order, in the case of City Union Bank Ltd vs. Assistant Commissioner of Income Tax, (2019) 74 ITR Trib (644) Chennai held as follows:-

“As regards to other limb of the argument of the assessee that in the absences of any finding by the Assessing Officer as to how the contention of the assessee that no expenditure was incurred is incorrect no disallowance should be made. We find from the assessment order that the assessee bank itself has offered a sum of ₹2,19,751/- under the provisions of Section 14A of the Act. From the perusal of the order of the Assessing Officer, it is clear that the Assessing Officer had not assigned any reason whatsoever as to how the claim of the assessee is incorrect. In the similar facts, the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT, 402 ITR 640 held that in the absence of the finding of the Assessing Officer resort to provisions of Section 14A of the Act r.w.r 8D of the Rules cannot be made. This decision was followed by the Co ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra) cited by holding as under:-

“Ground No. 8 challenges the addition of ₹3,88,882/- invoking the provision of Section 14A of the Act. It is the contention of the appellant that the appellant had not incurred any expenditure to earn exempt income. The Assessing Officer had not given any findings as to how the claim of the assessee bank that no expenditure was incurred to earn the exempt income was incorrect. In the absence of this finding resort to the provisions of rule 8D of the Income Tax Rules cannot be made as held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore this ground of appeal filed by the assessee is allowed. Accordingly, this ground of appeal stands allowed in favour of the assessee”.

Similar view was taken up by the Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd, 370 ITR 338 and PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 274. The Hon'ble Delhi High Court had firmly held that mere rejection of the explanation of the assessee per se cannot be accepted. This decision of Delhi High Court in the case of Moonstar Securities Trading and Finance Co. (P) Ltd, was affirmed by the

Hon'ble Supreme Court in the case of dismissal of SLP in PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 274”.

In the light of the above decisions, admittedly, in the present case, the Assessing Officer had not recorded any findings as to the correctness or otherwise of the claim of assessee company that only expenditure of Rs.73,602/- was incurred to earn exempt income. Therefore, the Assessing Officer was not justified in resort to provisions u/s.14A of the Act. Accordingly, no disallowance can be made u/s.14A of the Act.

08. It is unnecessary for us to deal with other arguments made by the assessee since we had held that no resort can be made to provisions of Section 14A of the Act. In the result, the appeal filed by the assessee stands allowed.”

6. Admittedly, in the present case also, against the voluntary disallowance made under section 14A of the Act by the assessee, the Assessing Officer has not recorded any satisfaction as to how the disallowance voluntarily made by the assessee is not correct and moreover, the Assessing Officer has not given any findings in the assessment order with regard to the correctness in respect of expenditure incurred to earn exempt income. The ld. DR could not controvert the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (supra), which was followed by the Coordinate Benches of the Tribunal in assessee's own case for the assessment year 2013-14 to decide the issue in favour of the assessee. Thus, respectfully following the decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment year 2013-14 as well as the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (supra), we hold that the Assessing Officer was not justified in making disallowance under section 14A of the Act. Thus, the ground raised by the assessee is allowed.

Similar view has been taken by the bench in AY 2017-18, ITA Nos.941/Chny/2020 order dated 29.07.2022.

5. In the present year also, we find that no objective satisfaction has been recorded by Ld. AO before proceeding to compute disallowance as per Rule 8D which is against the statutory mandate. The failure to do so would make the disallowance bad in law in terms of various binding judicial pronouncement. In terms of the statutory mandate of Sec.14A r.w.r. 8D, it was incumbent on the part of Ld. AO to record an objective satisfaction, having regards to the accounts of the assessee, as to why the disallowance offered by the assessee was not

acceptable. Without recording such a finding, no disallowance could be made u/s 14A r.w.r. 8D. It is settled legal position that the application of Rule 8D is not automatic as held by Hon'ble Supreme Court in **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)**. Upon perusal of assessment order, we find that Ld. AO has failed to record any objective satisfaction as to why the assessee's stand was not acceptable having regards to the accounts of the assessee as per the mandate of Sec.14A. This jurisdictional requirement was not satisfied by Ld. AO in the present case and Ld. AO straightway proceeded to compute disallowance as per Rule 8D. The application of Rule 8D, in our considered opinion, is not mechanical or automatic.

6. The Hon'ble Apex Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)** held that sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable. The said principle has been reiterated by Hon'ble High

Court of Madras in the case of **Marg Limited V/s CIT (TCA NO.41 to 43 & 220 of 2017 dated 30.09.2020)**. Further Hon'ble Apex Court in **Maxopp Investment Limited V/s CIT (91 Taxmann.com 154)**, at para-32, observed that it is that expenditure alone which has been incurred in relation to the income which is not includible in total income, is to be disallowed. If expenditure has no casual connection with the exempt income, such expenditure would be an allowable expenditure.

7. Applying the ratio of aforesaid principles as well as the consistent view of Tribunal in assessee's own case as cited before us, we would hold that since Ld. AO has mechanically applied the provisions of Rule 8D while making the aforesaid disallowance without establishing any nexus of expenditure claimed by the assessee with that of exempt income earned during the year, such disallowance is not sustainable in law. Accordingly, Ld. AO is directed to delete the additional disallowance while computing income under normal provisions as well as while computing Book profits u/s 115JB. We order so.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 06th December, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-12-2022
EDN/-

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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