

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

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

ITA No. 5263/Del/2019
Asstt. Year: 2015-16

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| Peartree Enterprises Pvt. Ltd. C4/142, Safdarjang Development Area, New Delhi – 110 016 PAN AACCP8759Q | Vs. | ACIT, Circle-19(2) New Delhi. |
| (Appellant) | | (Respondent) |

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|-----------------------|----------------------------|
| Assessee by: | None |
| Department by : | Shri Vivek Vardhan, Sr. DR |
| Date of Hearing | 01/02/2023 |
| Date of pronouncement | 01/02/2023 |

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 28.03.2019 of the Ld. Commissioner of Income Tax (Appeals) – 38, Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2015-16.

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

- "1. *That on the facts and circumstances of the case the learned Assessing Officer has erred in law, in making an addition of Rs. 2,06,092/- to return income as deemed expenses in respect of average value of investment as appearing the balance sheet on the first day and the last day of the previous year.*

2. *That on the facts and circumstances of the case the learned Assessing Officer has erred in law and initiating penalty proceeding u/s 271(1)(c) of Rs. 54,93,850/- u/s 68 of Income Tax Act.”*

3. The assessee company is stated to be in the business of civil construction contracts and cold storage. It filed its return for AY 2015-16 on 29.10.2015 declaring income of Rs. 21,83,750/-. The case was selected for compulsory scrutiny assessment. The Ld. Assessing Officer (“AO”) completed the assessment on 29.12.2017 on total income of Rs. 27,10,630/- under section 143(3) of the Income Tax Act, 1961 (**the “Act”**) including therein inter alia addition of Rs. 2,60,092/- under section 14A of the Act r.w. rule 8D of the Income Tax Rule, 1962 (**the “Rules”**).

4. The assessee challenged the impugned addition of Rs. 2,60,092/- under section 14A of the Act r.w. rule 8D of the Rule before the Ld. CIT(A) who confirmed the said addition by observing as under:

“In the case of the appellant, AO has worked out the disallowance as per the procedure laid down in Rule 8D(2)(iii) and worked out the disallowance of administrative expenses on the basis of the average investment. As per the provisions of section 14A(2), AO can determine the expenses related to exempt income if appellant has not made any disallowance suo moto. In the instant case, appellant has earned huge exempt income and claim of the appellant that no direct or indirect expenses are involved in earning the same is not acceptable and AO has correctly worked out disallowance as per the provision of section 14A read with Rule 8D. Hon'ble Apex Court in the Maxopp Investment (2018) 402 ITR 640 case held that, "the dominant purpose for which the investment into shares made by an assessee may not be relevant. That does not appear to be relevant factor and determining the issue at hand. Fact remains that such dividend income is not taxable. In this scenario, if, expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure.”

Considering the above facts, addition made by the AO u/s 14A at Rs.2,60,092/- is hereby confirmed.”

5. Aggrieved, the assessee is in appeal before the Tribunal.

6. Hearing was fixed on 12.01.2021, 13.07.2021, 22.09.2021, 28.12.2021, 29.03.2022, 22.06.2022, 16.11.2022 & 01.02.2023. None appeared for and / or on behalf of the assessee. The Departmental

Representative attended all the hearings. We, therefore, proceeded to decide the appeal ex-parte on merits.

7. Ground No. 1 relates to addition of Rs. 2,60,092/- under section 14A of the Act r.w. rule 8D of the Rules. Perusal of assessment order would reveal that from audited balance sheet the Ld. AO noticed that the assessee company has opening and closing balance of investments of Rs. 1,77,26,000/- and Rs. 1,77,26,000/- and has not disallowed any expense as per the provisions of section 14A(2) of the Act r.w. rule 8D of the Rules. The Ld. AO perused the balance sheet of the assessee and noticed that the assessee has made investment in various listed and unlisted companies to the tune of Rs. 1,22,61,749/- and has earned dividend/exempt income of Rs. 47,848/- during the year. Vide letter dated 08.08.2017, the Ld. AO asked the assessee to show cause why disallowance under section 14A of the Act r.w. rule 8D of the Rules be not made. In reply, the assessee submitted that no expenditure has been made for earning exempt income under section 10 since all exempt income are dividend and to earn dividend no expenditure has been incurred. Hence no disallowance is called for. Reliance was placed on the decision of Hon'ble Punjab & Haryana High Court in CIT vs. Hero Cycle Ltd. in ITA No. 331 of 2009.

8. The submissions of the assessee were not acceptable to the Ld. AO who observed that the intention of the assessee in making investment in other companies is only to earn exempt income which might accrue in future. After recording his satisfaction that the assessee has not made any/proper disallowance under section 14A r.w. rule 8D, the Ld. AO worked out the disallowance at Rs. 2,60,092/- which he added to the income of the assessee.

9. Before the Ld. CIT(A) the assessee reiterated the same submissions which were made before the Ld. AO. The Ld. CIT(A) reproduced the provisions of section 14A and analysed the provisions of sub-section (2) of section 14A r.w. sub-rule (2) of rule 8D and observed that the Ld. AO has

recorded his satisfaction regarding the impugned disallowance as the assessee has not made any disallowance in relation to exempt income earned during the year. The Ld. CIT(A) held that the Ld. AO has correctly worked out the disallowance and confirmed the same. This brought the assessee before the Tribunal.

10. We have heard the Ld. DR and perused the orders of the Ld. AO/CIT(A). In our opinion, the Ld. CIT(A) has correctly adjudicated the issue and upheld the impugned disallowance in the light of the decision of the Hon'ble Supreme Court in Maxopp Investment vs. CIT (2018) 402 ITR 640. We, therefore, decline to interfere and reject this ground.

11. Ground No. 2 relates to initiation of penalty proceedings under section 271(1)(c) of the Act against which no appeal lies. The ground being premature is rejected.

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

Order pronounced in the open court on 1st February, 2023.

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

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Dated: 01/02/2023

Copy forwarded to-

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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| 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 | |

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