

IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2229/Mum/2021
(Assessment Year: 2015-16)

Dy. CIT, Circle-4(2)(1) Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Hathway Cable and Datacom Ltd. 4 th Floor, Rahejas Corner of Mainavenue and V. P. Road, Santacruz (W), Mumbai-400 054
PAN/GIR No. AAACC 6814 B		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Nimesh Vora
Revenue by	:	Shri Samruddhi Dhananjay Hande
Date of Hearing	:	02.01.2023
Date of Pronouncement	:	30.03.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-56, Mumbai ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The Revenue has challenged the grounds of deletion of disallowance made u/s. 14A of the Act read with Rule 8D of the Income Tax Rules.

3. The brief facts of the case are that the assessee is engaged in the business of cable network service and had filed its return of income dated 29.11.2015, declaring loss at Rs.188,83,18,222/- under the normal provisions of the Act and book profit u/s. 115JB of

the Act at loss of Rs.59,84,72,922/-. The assessee filed its revised return of income dated 28.11.2016, declaring loss at Rs.181,17,65,658/- under the normal provisions and book profit u/s. 115JB at loss of Rs.59,84,72,922/-. The assessee's case was selected for scrutiny and reference was made to the Transfer Pricing Officer (TPO for short) to compute the arm's length price of specific domestic transaction. The TPO vide order u/s.92CA(3) of the Act dated 23.10.2018 determined the total adjustment of Rs.4,12,47,212/- to the arm's length price with respect to the specific domestic transactions entered by the assessee with its AE's. Subsequent to that the A.O. dated 29.12.2018 passed the assessment order u/s. 143(3) r.w.s. 144C(13) of the Act and determined the total income at (-)Rs.162,03,070/- and book loss on Rs.44,82,54,550/- along with TP adjustment of Rs.4,12,47,212/-.

4. The Assessing Officer (A.O. for short) made a disallowance of Rs.15,02,18,372/- u/s. 14A read with Rule 8D of the I.T. Rules and added the same to the total income of the assessee.

5. In an appeal preferred by the assessee before the Id. CIT(A), the impugned disallowance was deleted by the first appellate authority on the ground that the co-ordinate bench has decided the similar issue in assessee's case for A.Ys. 2014-15 and 2016-17 in favour of the assessee that no disallowance was called for where the assessee has not earned any exempt income.

6. The Revenue is in appeal before us, challenging the order of the Id. CIT(A) in allowing the additional ground raised by the assessee during the first appellate proceeding.

7. It is observed that the assessee in its return of income and audited final accounts has disallowed an amount of Rs.45,71,862/- u/s.14A of the Act while computing the total income during the impugned year. The assessee has declared opening non-current investments in quoted equity instrument at Rs.371,58,83,005/- and closing non current year investment in quoted equity instruments at Rs.381,56,62,941/- as on 31.03.2015. The closing current investment in debt market mutual fund was Rs.89,10,90,718/- as on 31.03.2015. The assessee furnished the working of disallowance u/s. 14A read with Rule 8D of the I. T. Rules, 1962 at Rs.1,42,53,377/- at one half percentage of the average value of the investment before the A.O. The assessee has calculated the average investment after reducing the investment in mutual fund as the profit on sale of mutual fund was offered to tax in the computation of the income. The A.O. disallowed the impugned amount of Rs.15,47,90,234/- u/s. 14A read with Rule 8D of the Act and had calculated the balance amount after deducting the *suo moto* disallowance of Rs.45,79,862/- and worked out the disallowance at Rs.15,02,18,372/- and added the same to the total income of the assessee and also added the same to the book profit u/s. 115JB of the Act. The Id. CIT(A), on the other hand, relied on the decision of the Tribunal in assessee's case for A.Ys. 2011-12, 2012-13, 14-15 and 2016-17 which was in favour of the assessee that when there is no claim of exempt income during the year under

consideration, no disallowance u/s. 14A including *suo moto* disallowance made by the assessee was to be made.

8. The learned Departmental Representative (ld. DR for short) for the Revenue contended that the ld. CIT(A) has deleted the disallowance made by the A.O. without considering the Board Circular No.5/2014 dated 11.02.2014 where only expenditure related to the earning of the income is to be allowed and the expenditure pertaining to earning of exempt income has to be disallowed. The ld. DR contended that the ld. CIT(A) has relied on the decision of the *Maxopp Investment Ltd. vs. CIT* [201] 402 ITR 640 (SC) where the Hon'ble Apex Court has not passed any speaking order on the said issue. The ld. DR relied on the order of the A.O.

9. The learned Authorised Representative (ld. AR for short) for the assessee relied on the decision of the Tribunal in assessee's case for earlier years and subsequent year and also relied on the decision of the ld. CIT(A).

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has made *suo moto* disallowance of Rs.45,71,862/- and has also relied on the decision of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd.* (supra), wherein it was held that when there is no exempt income, disallowance u/s. 14A of the Act is not warranted. The assessee has also relied on the decision of the tribunal in assessee's case for A.Y. 2012-13 wherein on identical facts the assessee had made *suo moto* disallowances. The assessee has also relied on the decision of the Tribunal for A.Y. 2014-15 in ITA No. 3840/Mum/2019, wherein the said

proposition was reiterated when there is no exempt income earned by the assessee, no disallowance is warranted u/s. 14A of the Act.

11. By respectfully following the said decisions, we hold that the Id. CIT(A) has rightly deleted the disallowance made by the A.O. u/s. 14A r.w Rule 8D of the Rules. In the absence of any contradictory facts, we find no infirmity in the order of the Id. CIT(A) as these are settled position of law on this issue.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 30.03.2023

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 30.03.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai