

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.8014/Del/2019
(ASSESSMENT YEAR 2016-17)**

UFO Moviez India Limited Valuable Techno Park Plot No.53/1, Road No.7 Marol MIDC Andheri (East) Mumbai-400 093 PAN-AABCV 8900E (Appellant)	Vs.	Asst.CIT Circle-27(1) New Delhi (Respondent)
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Appellant by	Mr. Vishal Kalra and Mr. Ankit Sahni, Advocates
Respondent by	Mr. Bhupendera Anant, SR-DR

Date of Hearing	08/05/2023
Date of Pronouncement	10/05/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-9, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A), Delhi-09/10400/2018-19 dated 12/06/2019 against the order passed by

Ld. Assistant Commissioner of Income Tax, Circle-27(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 18/12/2018 for the Assessment Year 2016-17.

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

"Based on the facts and circumstances of the case, UFO Moviez India Limited (hereinafter referred to as the 'Appellant') craves to prefer an appeal against the order dated 12 June 2019 issued by the learned Commissioner of Income-tax (Appeals) - 9, New Delhi ['CIT(A)'] (received by the Appellant on 12 July 2019) upholding the order dated 18 December 2018 issued by the learned Assistant Commissioner of Income Tax - 27(1), New Delhi ('AO') under section 143(3) of the Income-tax Act, 1961 ('Act'), on the following grounds:

Disallowance under section 14A of the Act read with Rule 8D of Income-tax Rules, 1962 ('Rules')

1. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in upholding an additional disallowance of Rs 36,07,446 under section 14A of the Act read with rule 8D of the Income-tax, Rules 1962 ('Rules') over and above the suo moto disallowance of Rs 9,00,000 made by the Appellant.*

2. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in not considering the basis adopted by the Appellant for computing suo moto disallowance of Rs 9,00,000 under section 14A of the Act read with rule 8D of the Rules.*

3. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in disallowing interest expenditure of Rs 48,186 under Rule 8D(2)(ii) of the Rules without considering the fact that the investments were made by the Appellant out of its own funds and not out of borrowed funds.*

4. *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in disallowing amount of Rs 44,59,260 under Rule 8D(2)(iii) of the Rules as 0.5% of average value of 1 investments in the Appellant's subsidiary, Scrabble Entertainment Limited, without considering the basis adopted by the Appellant for computing suo moto disallowance of Rs 9,00,000/-.*

The Appellant respectfully submits that each of the above grounds/ sub-grounds of appeal are without prejudice to and independent of one another.

The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the above grounds/sub-grounds of appeal at any time before or at the time of the appeal.”

3. At the outset, we find that the delay in filing of appeal by the assessee before us by 23 days. The assessee has filed a confirmation letter through the Chartered Accountant by letter dated 10/10/2019 stating that the order of the Ld. CIT(A) was handed over to him for further action and that the Chartered Accountant had ignored the dead line due to inadvertence and ultimately appeal was filed with the delay of 23 days. In view of this, we condone the delay and admit the appeal filed by the assessee for adjudication.

4. The only issue to be decided in this appeal is challenging the disallowance made u/s 14A of the Act r.w.Rule-8D of the IT Rules.

5. We have heard the rival submissions and perused the material available on record. The assessee is engaged in the business of digital cinema distribution and also engaged in the business of importing and supplying to exhibitors across India under a leasing

arrangement, various DCI compliant equipment and Non-DCI equipment. The return of income for AY 2016-17 was electronically filed by the assessee company declaring total income of Rs.76,45,30,000/-. The Ld. AO had observed that one of the main reasons for selection of this case for scrutiny under Computer Assisted Selection of Cases for Scrutiny (CASS) was examination of 'high interest expenditure incurred by the assessee and also exempt income earned by the assessee'. It is not in dispute that the assessee company earned exempt dividend income of Rs.11,03,54,591/- which has been received from Scrabble Entertainment Limited (Subsidiary Company). The assessee suo moto disallowed an amount of Rs.9,00,000/- u/s 14A of the Act towards expenditure incurred for the purpose of earning such exempt income. The assessee also furnished the basis for such disallowance made before the ld. AO. The said working is also enclosed in page 26 of the PB wherein the assessee had taken the salary of concerned persons relatable to investment activity, office rent, office expenses and the electricity charges as attributable to the investment activity. The assessee also furnished the entire list of investments made by it before the ld. AO. Out of the said

investments, the assessee had earned exempt income only from one company i.e., Scrabble Entertainment Limited during the year under consideration. These facts are not in dispute. The assessee also submitted the complete list of borrowings on account of Term Loan, Vehicle Loan, Cash Credit facility and also gave the explanation with regard to the utilization of the same. Further the assessee also gave an explanation before the Ld. AO in the form of availability of sufficient own funds in its kitty which would be sufficient to meet the investments yielding exempt income. The Ld. AO disregarded the entire contentions of the assessee and directly proceeded to apply computation mechanism provided in Rule 8D(2) of the Rules and made disallowance under 2nd and 3rd limb thereon amounting to Rs.78,82,325/- After reducing the suo moto disallowance of Rs.9,00,000/- the Ld. AO ultimately disallowed the sum of Rs.69,82,325/- in the assessment. The Ld. CIT(A) upheld the action of the Ld. AO, but granted partial relief to the assessee with a direction to the Ld. AO to consider only those investments which had yielded exempt income to the assessee as against the total investments considered by the Ld. AO. Aggrieved, the assessee is in appeal before us.

6. At the outset, we find that assessee had given detailed explanation before the Ld. AO with regard to various investments made by it; details of dividend income derived thereon; details of complete borrowings made by it and also proved that those borrowings were utilized for the purpose of making investments of the company. The assessee also furnished the complete details of the availability of the own funds in its kitty to prove the fact that investments were made only out of the own funds of the assessee and not borrowed funds. The assessee had also given breakup of *suo moto* disallowance of expenses made by it before the ld. AO. We find that the Ld. AO had completely disregarded the entire contentions of the assessee and not even bothered to record his objective satisfaction with cogent reasons having regard to the accounts of the assessee as to why the *suo moto* disallowance made by the assessee is incorrect. In our considered opinion, this is the mandate provided in provisions of section 14A(2) of the Act r.w.Rule 8D(1) of the Rules. Without recording such objective satisfaction for rejection of the claim of the assessee, the disallowance made by the Ld. AO u/s 14A of the Act would have no legs to stand in the eyes of law. Our view is further fortified by the decision of the Hon'ble

Supreme Court in the Maxopp Investment Ltd. vs. CIT reported in 402 ITR 640 (SC) and, hence, we direct the Ld. AO to delete the disallowance made u/s 14A of the Act in the assessment. Accordingly, grounds raised by the assessee are allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10th May, 2023.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/05/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI