

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3284/Mum/2022  
(Assessment Year: 2013-14)

M/s. Business Match Services (India) Private Limited 2 Naptune II, Smt. Nargis Dutt Road, Bandra (W), Mumbai-400 050	Vs.	ACIT, Circle 12(1)(2) Mumbai
PAN/GIR No. AAACB 6129 N		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Ravikant S. Pathak
<b>Revenue by</b>	:	Shri Chetan M. Kacha

<b>Date of Hearing</b>	:	14.02.2023
<b>Date of Pronouncement</b>	:	12.05.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by assessee challenging the order of learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The assessee has challenged the grounds of disallowance of Rs.9,60,000/- u/s.14A of the Act as against the exempt income of Rs.7,29,565/- which is out of the dividend income earned by the assessee.

3. The brief facts are that the assessee is a private limited company engaged in the business of investments in shares and immovable properties, finance activities and trading in shares and securities including derivatives. The assessee company had filed

its return of income date and 30.09.2013 declaring loss of Rs.3,38,04,124/- and the return of income was subsequently revised on 31.03.2015 claiming loss on inventory valuation and declared total loss of Rs.4,90,00,948/-. In the return of income, the assessee had voluntarily disallowed Rs.9,60,000/- u/s. 14A of the Act. The assessee's case was selected for scrutiny and assessment order dated 29.03.2016 was passed u/s.143(3) of the Act where the Assessing Officer (A.O. for short) determined total income at Rs.7,24,04,830/- by making various additions/disallowances. The assessee challenged the impugned order before the learned CIT(A). Subsequent to this the assessee's case was reopened u/s. 147 of the Act for the reason that in the regular assessment proceeding instead of the gross interest expense only the net interest expense has been considered while computing the disallowance u/s. 14A read with Rule 8D of the Act and, therefore, the same amounted to income chargeable to tax has escaped assessment. Assessment order dated 27.12.2018 was passed u/s.143(3) r.w.s. 147 of the Act and the AO had determined total income at Rs.9,10,06,662/-.

4. The assessee was in appeal before the Id. CIT(A) challenging the grounds of reopening and the addition/ disallowances made by the AO in reassessment proceedings. The actual exempt income earned by the assessee was Rs.7,29,565/- and accordingly, the assessee contended that the disallowance u/s. 14A should not exceed the exempt income. The Id. CIT(A), though accepted the above contentions in principle, yet restricted the disallowance to Rs.9,60,000/-, since the assessee had made *suo moto* disallowance of the same u/s. 14A of the Act. The Id. CIT(A) relied on the decision of the Hon'ble Apex court in the case of *CIT vs Maxoop investments Ltd* in 402 ITR 640 (SC), wherein it was held that disallowance u/s.14A cannot exceed the exempt income

earned by the assessee for that year. The Id. CIT(A) also relied on various other decisions for the said proposition.

5. The assessee is in appeal before us challenging the order of the Id. CIT(A) in restricting the disallowance to Rs.9,60,000/- u/s.14A of the Act on the ground that the same shall not exceed the exempt income earned by the assessee for that year.

6. The Id. Authorised Representative (Id. AR for short) for the assessee contended that the assessee has earned exempt income of Rs.7,29,565/- during the impugned year and had *suo moto* made a disallowance of Rs.9,60,000/- as per the provisions of section 14A of the Act. The Id.AR further stated that the Id.CIT(A) ought not to have restricted the disallowance exceeding the exempt income earned by the assessee. The Id. AR relied on the decisions rendered by the co-ordinate bench in the case of a group concern of the assessee in *ITO vs. Centrum Capital Ltd.* (in ITA No. 497/Mum/2019).

7. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, had controverted the said fact and contended that the Id. CIT(A) was right in disallowing the impugned amount which was *suo moto* made by the assessee as being 20% of the fees paid to M/s. K. Right Management Solution Pvt. Ltd. The Id. DR further contended that since the assessee itself had agreed to the disallowance of Rs.9,60,000/-, the ground raised by the assessee does not hold merit. The Id. DR relied on the order of the Id. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee had earned dividend income of Rs.7,29,565/- during the year under consideration and the same is reflected at note 15 of the financial

statement under the head other income. The assessee is said to have disallowed Rs.9,60,000/- u/s.14A of the Act in its return of income which is stated to be 20% of fees paid by the assessee to M/s. K. Right Management Solution Private limited. We are of the considered opinion that the ld. CIT(A) should have restricted the disallowance u/s.14A to the extent of the exempt income earned by the assessee for the year under consideration. This issue before us is no longer *res integra* as various courts including the Hon'ble Apex Court has held that disallowance u/s.14A read with rule 8D should not exceed the exempt income earned by the assessee. We would like to place reliance on the decision of the Tribunal in the case of *Chalet Hotels Ltd. Vs. DCIT, CC-4(2)* (in ITA No. 3747/Mum/2019 vide order dated 11.01.2021 for A.Y. 2015-16), wherein on similar facts where the assessee had made *suo moto* disallowance more than that of the exempt income earned for that year, it was held that the disallowance should be only to the extent of the exempt income earned and not more than that. In light of the said positions, we are of the considered view that disallowances u/s.14A read with rule 8D is to be restricted only to the extent of the exempt income earned by the assessee during the impugned year. We, therefore, direct the A.O. to recompute the income of the assessee accordingly. Hence, the ground raised by the assessee is allowed.

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

*Order pronounced in the open court on 12.05.2023*

Sd/-

(B. R. Baskaran)  
Accountant Member

Mumbai; Dated : 12.05.2023  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**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