

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.8736/DEL/2019
Assessment Year 2010-11

Sarva Haryana Gramin Bank, (before amalgamation know as Haryana Gramin Bank) Plot No.1 Sector-3 Rohtak	Vs.	ACIT Rohtak Circle Rohtak
TAN/PAN: AAKAS1464M (AAALH0138G)		
(Appellant)		(Respondent)

Appellant by:	Shri Naveen Goyal, CA		
Respondent by:	Ms. Meenakshi Dohre, Sr.DR		
Date of hearing:	27	03	2023
Date of pronouncement:	23	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Rohtak ('CIT(A)' in short) dated 30.09.2019 arising from the assessment order passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee read as under:

“1. The Id. CIT(A) erred in law and on facts in upholding the assessment on an entity, which not exist at all.

2. The Id. CIT(A) erred in law and on facts in upholding the addition of Rs.30,88,553/- u/s. 14A.

3. *The ld. CIT(A) erred in law and on facts in not considering the revised computation of income and allowing claim of Rs.26,37,551/-.*

4. *The ld. CIT(A) erred in law and on facts in not following the binding judgment of the Higher Court/tribunals.*

3. Grounds No.1, 3 and 4 are dismissed as not pressed.
4. Ground No.2 concerns additions / disallowances of Rs. 30,88,553/- under Section 14A of the Act.
5. Briefly stated, the assessee is a banking company and is engaged in providing banking services in the name of Haryana Gramin Bank. In the course of the scrutiny assessment, the Assessing Officer *inter alia* invoked provisions of Section 14A and computed the disallowance as per Rule 8D of the Income Tax Rules at Rs.30,88,553/- on tax free income including dividend earned from investments. The CIT(A) confirmed the aforesaid action.
6. Aggrieved, the assessee preferred appeal before the ITAT.
7. We have heard the rival submissions and perused the case records with the assistance of the respective sides.
8. The assessee submits that the disallowances under Section 14A comprises of Interest Expenses under Rule 8D(2)(ii) of Rs.27,18,346/- and administrative expenses under Rule 8D(2)(iii) of Rs.3,70,207/-. The assessee contends that the issue towards disallowance under Section 14A has been examined by the Tribunal in identical facts in Assessment Year 2014-15 as well as Assessment Year 2015-16 where the relief was given to the assessee in the light of the factual matrix as well as the judicial pronouncements.
9. The Co-ordinate Bench of Tribunal in ITA

No.1984/Del/2019 Assessment Year 2015-16 has examined merits of the disallowance under Section 14A of the Act in Assessee's own case as under:

“5. *Apropos ground relating to disallowance u/s 14A : On this issue, AO noted that assessee has made investment in tax free bonds/debentures, mutual funds, shares etc. which yielded tax free dividend and tax free interest and exempted long term capital gain totaling to Rs.3,87,57,264.25. That against this exempted income, the assessee has made disallowance of expenses u/s 14A of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.18,69,824/-. AO enquired about the computation of disallowance u/s 14A. After the submissions of the computation by the assessee, AO was not satisfied. He proceeded to invoke the provisions of Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') and made disallowance u/s 14A read with Rule 8D(2)(ii) amounting to Rs.2,27,55,202/- and under Rule 8D(2)(iii) amounting to Rs.22,32,490/-.*

6. *Against the above order, assessee filed an appeal before the ld. CIT(A). Ld. CIT (A) referred to the provisions of section 14A. Ld. CIT(A) noted the assessee's submissions and case laws relied upon and also obtained the remand report from the AO. In this remand report, disallowance u/s 8D(2)(ii) was Rs.2,27,55,202/- and under Rule 8D(2)(iii) was Rs.22,32,490/-, thus total disallowance u/s 14A read with Rule 8D was Rs.2,49,87,692/-. Ld. CIT (A) relied upon the decision of Hon'ble Apex Court in the case of Maxopp Investment Ltd. 91 taxmann.com 154 (SC) to distinguish the jurisdiction of Hon'ble Punjab & Haryana High Court in the case of 78 taxmann.com 3 (2017) and CBDT Circular No.18/2015. Ld. CIT (A) was of the opinion that AO has rightly invoked the provisions of section 14A and computed the disallowance as per Rule 8D and that there is no anomaly in the order of the AO.*

7. *Against this order, assessee filed an appeal before us. We have heard both the parties and perused the record.*

8. *Assessee reiterated that assessee has sufficient interest free funds to make investment in tax free bonds/debentures/mutual funds/shares etc. and bank has not incurred any interest expenditure. In this regard, assessee has referred to the decision of Maruti Udyog Ltd. vs. DCIT 92 ITD 119 (Del.). Certain other case laws have been referred and also referred the decision of ITAT in assessee's own case in ITA No.4073/Del/2018 for AY 2014-15 order dated 25.10.2021.*

9. *Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.*

10. *We note that ITAT in assessee's own case for AY 2014-15 (supra) has dealt with the same issue and deleted the addition by holding as under:-*

“10. *We have heard the rival contentions and perused the material available on record. We find merit into the contentions of the Ld. Counsel for the assessee that Ld.CIT(A) has mis-directed himself by wrongly applying the ratio of the judgement of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs CIT (supra). Infact, the judgement of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) supports the case of the assessee. Moreover, the Hon'ble Apex Court in later judgement rendered in Civil Appeal No.9606 of 2011 in the case of South Indian Bank Ltd. vs CIT after considering the judgement rendered in the Maxopp Investment Ltd. (supra) clarified as under:-*

25. *“Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 02.11.2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of CIT Vs. Nawanshahar Central Cooperative Bank Ltd. wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business. The Punjab and Haryana High Court, in the case of Pr. CIT, vs. State Bank of Patiala while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock in trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income.*

26. *Reverting back to the situation here, the Revenue does not contend that the Assessee Banks had held the securities for maintaining the Statutory Liquidity Ratio (SLR), as mentioned in the circular. In view of this position, when there is no finding that the investments of the Assessee are of the related category, tax implication would not arise against the appellants, from the said circular.*

27. *The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under Section 14A of Income Tax Act for investments made in tax free bonds/ securities which yield tax free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favouring the assessees.*

28. *The above conclusion is reached because nexus has not been established between expenditure disallowed and earning of exempt income. The respondents as earlier noted, have failed to substantiate their argument that assessee was required to maintain separate accounts. Their reliance on Honda Siel (Supra) to project such an obligation on the assessee, is already negated. The learned counsel for the revenue has failed to refer to any statutory provision which obligate the assessee to maintain separate accounts which might justify proportionate disallowance.*

29. *In the above context, the following saying of Adam Smith in his seminal work – The Wealth of Nations may aptly be quoted:*

“The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person.”

Echoing what was said by the 18th century economist, it needs to be observed here that in taxation regime, there is no room for presumption and nothing can be taken to be implied. The tax an individual or a

corporate is required to pay, is a matter of planning for a tax payer and the Government should endeavour to keep it convenient and simple to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue.

30. In view of the forgoing discussion, the issue framed in these appeals is answered against the Revenue and in favour of the assessee. The appeals by the Assesseees are accordingly allowed with no order on costs.”

Respectfully following the above-referred judgement of Hon’ble Supreme Court, we hereby direct the Assessing Officer to delete the addition.”

11. We find that in assessee’s own case on the similar issue, ITAT has deleted the addition. It is not the case that Hon’ble jurisdictional High Court has reversed the said decision. Hence, following the aforesaid precedent, we set aside the orders of the authorities below and delete the addition. Accordingly, ground no.2 is allowed.”

10. In the absence of departure in facts shown to us in the course of hearing, we shall respectfully follow the view taken by the Coordinate Bench. On facts, the Assessee contends that the interest free funds available with Assessee far exceeds the corresponding investments giving rise to exempt income. Resultantly, the additions made owing to disallowance towards interest of Rs.27,18,346/- under Section 14A are reversed. The estimated expenses towards administrative and other expenses at Rs.3,70,207/- is however retained in the absence of any justification advanced in this regard.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 23/05/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /05/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**