

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA Nos. 5855& 5856/MUM/2019
Assessment Years: 2013-14& 2015-16

Solitaire Appliances Pvt. Ltd.,
171-C, 17th floor, Miittal
Court, C Wing Nariman Point,
Mumbai-400021.

PAN No. AABCV 0807 C
Appellant

Vs. Deputy Commissioner of
Income-tax -3(3)(2),
Room No. 609, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

ITA No. 5587/MUM/2019
Assessment Year: 2015-16

Deputy Commissioner of
Income-tax -3(3)(2),
Room No. 628, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. Solitaire Appliances Pvt. Ltd.,
171-C, 17th floor, Miittal
Court, C Wing Nariman Point,
Mumbai-400021.

PAN No. AABCV 0807 C
Respondent

ITA No. 7559/MUM/2019
Assessment Year: 2016-17

ACIT, Circle -3(3)(2),
Room No. 628, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. Solitaire Appliances Pvt. Ltd.,
171-C, 17th floor, Miittal
Court, C Wing Nariman Point,
Mumbai-400021.

PAN No. AABCV 0807 C
Respondent



CO No. 27/MUM/2020
(Arising out of ITA No. 7559/MUM/2019)
Assessment Year: 2016-17

Solitaire Appliances Pvt. Ltd.,
171-C, 17th floor, Miittal
Court, C Wing Nariman Point,
Mumbai-400021.

PAN No. AABCV 0807 C
Appellant

ACIT, Circle -3(3)(2),
Room No. 628, 6th floor,
Vs. Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Jay Dharod
Revenue by : Mr. Suresh Periasamy

Date of Hearing : 26/05/2023
Date of pronouncement : 31/05/2023

ORDER

PER BENCH

These cross appeals by the assessee and Revenue and the cross objection by the assessee are directed against separate orders passed by the Ld. First Appellate Authority for assessment year 2013-14 ,2015-16 and 2016-17 respectively. Being common issue in dispute involved in these appeals, same were heard together and disposed off by way of this consolidate order for convenience and avoid repetition of facts.

2. First of all, we take up the appeal of the assessee for assessment year 2013-14. The relevant grounds of the appeal are reproduced as under:



1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the Ld. CIT(A)'] erred in confirming action of the Ld. Assessing Officer of disallowing a sum of Rs.17,46,66,300/- being interest expenditure claimed u/s 36(1)(iii) and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made there under.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that:*
 - *The appellant company made investments in its group companies in the course of furtherance of its business out of commercial expediency; and*
 - *Making investment in group companies is a business activity/object of the appellant company authorized by its Memorandum of Association and therefore, interest claimed cannot be disallowed.*
Which is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.

2.1 Briefly stated, facts of the case are that the assessee company was engaged in the business of trading in electronic goods. For the year under consideration, the assessee filed return of income on 28.09.2013 declaring total income of Rs.17,64,882/- under the normal provisions of the Income-tax Act, 1961 (in short 'the Act'). The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. In the assessment completed u/s 143(3) of the Act on 30.10.2015, the Assessing Officer made disallowance of Rs.17,46,66,300/- in terms of section 36(1)(iii) of the Act out of the interest charged on borrowed funds. Further, though the Assessing Officer proposed



disallowance u/s 14A of the Act, however no addition was made in the computation in view of interest already disallowed u/s 36(1)(iii) of the Act. On further appeal, the Ld. CIT(A) upheld the disallowance of section 36(1)(iii) of the Act. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

3. The brief facts qua the issue in dispute are that the assessee borrowed funds/loans in earlier years from M/s Videocon Industries Ltd. and for the year under consideration M/s Videocon Industries Ltd. charged interest on the loans extended to the assessee company. The appellant company invested the fund borrowed into investment in its group companies. It was claimed that those investments were made out of commercial expediency and utilized for the purpose of the business therefore, the interest paid on loan taken was for the purpose of business and was not liable for disallowance u/s 36(1)(iii) of the Act. Before us, the Ld. Counsel of the assessee submitted that due to shifting of the documents in godowns, the relevant documents were not readily traceable by the assessee for supporting the commercial expediency of the loan. The Ld. Counsel also submitted that the parent company namely M/s Videocon Industries Ltd. is under National Company Law Tribunal proceedings and therefore he requested that matter may be restored back to the file of the Assessing Officer for



deciding afresh after verification of the evidence in support of commercial expediency.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Section 36 of the Act prescribe for allowance of amount of the interest paid in respect of capital borrowed for the purpose of business or profession. Further, the Hon'ble Supreme Court in the case of **SA Builders Ltd. v. CIT 288 ITR 1 (SA)** held that when interest free loans are given to sister company (i.e. subsidiary company) as a measure of the commercial expediency, then coresponding interest on borrowed capital is also eligible for deduction. Before us, the Ld. Counsel of the assessee has expressed difficulty in collecting and submitting documentary evidence in support of commercial expediency due to the reason the parent company is before the NCLT proceedings and documents of the assessee have been shifted in godowns. In view of difficulty in producing the documents before us, in the interest of substantial justice, we accept the prayer of the assessee for restoring the matter to the Ld. Assessing Officer for deciding taking into consideration the documentary evidence in support of commercial expediency, which the assessee has agreed to produce before the Assessing Officer. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.



5. Now we take up cross appeal of the assessee and the Revenue for assessment year 2015-16. The respective grounds are reproduced as under:

Assessee's ground

1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the CIT(A)'] erred in confirming action of the Ld. Assessing Officer of disallowing a sum of Rs.2,66,86,454/- out of total interest claimed u/s 36(1)(iii) and the reason given for disallowing the same are wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961 and the Rules made there under.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the appellant has given the advances to its group concern for their business purposes out of commercial expediency which is wrong and contrary to the provisions of the Income Tax Act, 1961 and the rules made there under.*

Revenue's Grounds of Appeal

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance u/s 14A by holding that no disallowance u/s 14A is called for in respect of investments which do not earn exempt income which is contrary to CBDT Circular No.5/2014 which clarified that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance u/s 14A by holding that no disallowance u/s 14A is called for in respect of investments which do not*



earn exempt income in view of the decision of the Hon'ble Supreme Court in the case of M/s, Maxopp Investment Ltd. vs. CIT in Civil Appeal No. 104-109 of 2015 dated 12.02.2018, wherein the Hon'ble Supreme Court has held that Section 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade?*

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance u/s 14A in view of the finding of the Hon'ble Supreme Court in para 42 of their decision in the case of M/s. Maxopp Investment Ltd. vs. CIT in Civil Appeal No. 104-109 of 2015 dated 12/02/2018, wherein the Hon'ble Supreme Court have upheld the principle of apportionment in cases where the assessee has mixed funds?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the disallowance u/s 14A to the book profit which is contrary to the decision of the Hon'ble ITAT 'D' Bench in the case of ITO vs. RBK Share Broking Pvt. Ltd. -37 taxman 128(2013) and the decision of the Hon'ble ITAT T Bench in the case of D.C.I. T. Cen. Cir. 18 & 19, Mumbai vs. Viraj Profiles Ltd. (2015) 64 taxmann.com 52 (Mumbai - Trib.)/2016, 156 ITD 72 (Mumbai - Trib.) wherein it is clear that the provisions of section-14A r.w.r. 8D is applicable for computation of book profit u/s 115JB of the Act.

5. The appellant prays that the order of CIT (A) on the above grounds be set aside and that of Assessing Officer be restored

6. We find that in the case of the assessee, the ground No. 1 and 2 raised are identical to corresponding grounds raised in assessment year 2013-14 and therefore, to have consistency in our decision, the ground No. 1 and 2 of the appeal of the assessee are restored back to the file of the Assessing Officer for deciding afresh keeping in view the documentary to support the contention of



commercial expediency of loans. The grounds are accordingly allowed for statistical purposes.

6.1 As far as appeal of the Revenue is concerned, we find that the Ld. CIT(A) has deleted the addition of section 14A of the Act in view of binding precedent on the issue in dispute. The relevant finding of the Ld. CIT(A) is reproduced as under:

“3.2.2; This ground pertains to disallowance u/s 14A r.w.r. 8D. The appellant contended before the assessing officer that no exempt income has been earned. The Assessing officer while relying on the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce (Supra) made disallowance of Rs. 2:16,54,158/- u/s 14A r.w.r 8D.

3.2.3 The main thrust of the appellant is that the appellant company has not earned any exempt income during the year under consideration. Recently, Hon'ble Supreme Court of India has given a landmark judgement on the section 14A in the case of Maxopp Investment Ltd 91 Taxmann.com 154. The judgement is particularly relevant on the issues of strategic investment and stock in trade, while applying the provisions of section 14A. It is held that If expenditure is incurred on earning dividend income, that much of expenditure which is attributable to dividend income has to be disallowed and cannot be treated as business expenditure. In those cases, where shares are held as stock-in-trade, main purpose is to trade in those shares and earn profits therefrom, in the process, certain dividend is also earned, though incidentally, which is also an income. This triggers applicability of section 14A which is based on theory of apportionment of expenditure between taxable and non-taxable income, Therefore, to that extent, expenditure incurred in acquiring those shares will have to be apportioned. Hon'ble Supreme Court has held that the disallowance u/s 14A cannot exceed the exempt income: / find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has noted in para 40 of said order as under:

"We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had



already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable.

In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the IT AT."

3.2.4 ' In view of the above detailed discussion of Hon'ble SC order in Maxopp Investments Ltd, it is held here that it is not a fit case for invoking provisions of section 14A as no exempt income has been earned by the appellant at all. It is worthwhile to mention over here that in a recent judgement dated 2/7/18 in the case of Chettinad Logistics Pvt Ltd, (95 Taxmann.com 250), the Hon'ble Apex Court re-affirmed its stand when it dismissed the SLP against Ld Madras High Court ruling that Section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year."

6.1 Since, the Ld. CIT(A) has followed the binding precedent on the issue in dispute, we do not find any error in the order of the Ld. CIT(A) and accordingly, we uphold the same. The grounds raised by the Revenue are accordingly dismissed.

7. Now we take the appeal of the Revenue and cross objection of the assessee for assessment year 2016-17. The respective grounds are reproduced as under:

Revenue's Grounds of appeal

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance u/s 14A which was computed as per Rule 8D of the I.T. Rules 1962 on the basis of CBDT Circular No. 5/2014 dated 11.02.2014 which clearly states that it is not necessary to earn exempt income in a particular year in which the disallowance is made.*



2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s 14A to the exempt income earned during the year which is contrary to CBDT circular No. 5/2014 which clarifies that the Rule 8D r.w.s. 14A of the Act provides for disallowance of expenditure even where taxpayer in a particular year has not earned any exempt income.*
3. *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.*

Cross-objection of the assessee

1(a) On the facts and in the circumstances of the case and in law, the lower authorities have erred in disallowing the proportionate interest of Rs.83,45,534/- out of the total interest claimed u/s 36(1)(iii) of the Income Tax Act, 1961 by holding that the same are not for the purpose of business, which is wrong and contrary to the provisions of Income Tax Act, 1961, and the Rules made there under.

1(b) On the facts and in the circumstances of the case and in law, the lower authorities failed to appreciate that the appellant has given advances out of commercial expediency and wholly and exclusively for the purpose of business and doing so is wrong and contrary to the provisions of Income Tax Act, 1961, and the Rules made there under.

8. Both the grounds raised by the Revenue in the appeal and grounds raised by the assessee in cross examination on the issue are identical to grounds raised in the cross appeals of the Revenue and assessee for assessment year 2015-16 therefore, following our finding for assessment year 2015-16, the respective grounds raised in appeal of the Revenue and cross objection of the assessee are decided mutatis mutandis.



9. In the result, the appeals of the assessee for assessment year 2013-14 and 2015-16 and cross objection for 2016-17 are allowed for statistical purposes whereas appeal of the Revenue for assessment year 2015-16 and 2016-17 are dismissed.

Order pronounced in the open Court on 31/05/2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/05/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai