

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G. S. PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7594/Del/2018
(Assessment Year : 2013-14)

M/s. Living Media India Ltd. K-9, Connaught Circus, New Delhi-110001 PAN : AAACL0087H	Vs.	ACIT, Circle-15(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Madhur Aggarwal, Adv. & Shri Shailesh Gupta, CA
Revenue by	Ms. Garima Sharma, Sr. DR & Shri Jeetender Chand, Sr. DR

Date of hearing:	01.06.2023
Date of Pronouncement:	30.06.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 11.09.2018 in appeal no. 86/17-18 in assessment year 2013-14 passed by Commissioner of Income Tax (Appeals)-36, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 23/03/2016 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle 15(2), Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The assessee is engaged in the business of Subscription, Publishing and trading of books, magazines and diaries, sale of advertisement space in magazines, trading of audio Cassettes, CDs and Art objects etc. Revised return declaring loss of Rs. 23,49,28,640/- was filed which was selected for scrutiny and notice u/s 143(2) were issued. As per the assessment order, during the course of assessment proceedings it was noticed that the assessee has investments in equity shares, income from which does not form part of total income to the extent of 1,39,00,73,250/-. Ld. AO considering provisions of Section 14A and Rule 8D of the Income Tax Rules and following Circular No. 5/2014 dated 11.02.2014 of CBDT disallowed an amount of Rs. 6,37,90,540/- with following computation :-

S. No.	Disallowance	Amount (Rs.)
1.	The amount of expenditure directly relating to income which does not form part of total income	NIL
2.	In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula- AXB/C Where A= amount of expenditure by way of interest other than the amount of interest included in clause (1) incurred during the previous year B= the average of value of investment, Income from which does not or shall not form part of the total income appearing in the balance sheet of the assessee, on the last day and the last day of the previous year C= the average value of total assets	$A = 23,43,07,375/-$ $B = 1,19,85,30,621/-$ $C = 4,85,87,34,059/-$ $A*B/C = Rs. 5,77,97,887/-$ Hence, disallowance = Rs. 5,77,97,887/-

	(Current Assets net of the investments so made) as appearing in the balance sheet of the assessee on the first day and the last day of the previous year. Out of interest paid – A*B/C	
3.	An amount equal to on-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.	½ % of average investment of Rs. 1,19,85,30,621/- =Rs. 59,92,653/-
	Total disallowance u/s 14A	Rs. 6,37,90,540/-

2.1 Ld. AO had also made a disallowance of Rs. 78,20,000/- u/s. 37(1) of the Act observing that during the year under consideration the assessee company has incurred interest expenses @ 3.4% on the funds borrowed whereas the loans and advances to related parties are interest free. It concluded the proportionate finance cost attributable to the interest free advance given by the assessee company to its related concern comes to Rs. 78,20,000/- being 3.4% of Rs. 23 crores. Ld. AO had observed that assessee had diverted interest bearing funds to not interest bearing activities.

3. In appeal before Ld. First Appellate Authority the disallowances were sustained, accordingly assessee is in appeal before this Tribunal raising following grounds :-

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining a disallowance of a sum of Rs 6,37,90,540/- under section 14A of the Act, which disallowance is unjustified and untenable in law and thus, should be deleted as such. That further, in doing so, the CIT (A) has failed to appreciate the fact that the assessee appellant had adequately and properly disallowed a sum of Rs

64,02,092/- under section 14A of the Act and the disallowance so sustained is unjust, untenable and needs to be deleted, as such.

1.1 That further, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that no objective or cogent satisfaction was recorded while working out the said disallowance under section 14A of the Act and as such the disallowance so made should be deleted.

1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate the fact that the investments were made in past and that too out of surplus funds and internal accruals and as such there was no requirement or occasion to have computed disallowance on account of interest paid on borrowings as no investment was made out of borrowed funds.

2. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of proportionate interest amounting to Rs 78,20,000/- under section 37 of the Act, which disallowance is unjustified and untenable in law and thus, should be deleted, as such.

2.1 That in doing so, the Commissioner of Income Tax (Appeals) has further erred in sustaining the said disallowance by ignoring the replies/ evidences furnished by the assessee appellant and the learned CIT (A) has sustained the said disallowance on irrelevant and extraneous considerations without there being any adverse material and evidence and purely on surmises and conjectures as such disallowance made is wholly untenable on facts and in law.

3. That the learned Commissioner of Income Tax (Appeals) has further grossly erred in relying on the judgments and statutory provisions totally inapplicable to the facts of the case of the appellant company.

4. That the appellant reserve the right to add, amend, alter delete any/ all grounds of appeal either before or at the time of the hearing of the appeal.”

4. Heard and perused the record. The ground wise findings are as below.

5. **Ground no. 1; 1.1 and 1.2;** On behalf of the assessee it was submitted that the assessee had made a suo moto disallowance u/s 14A of the Act and without recording any satisfaction note the ld. AO made disallowance u/s 14A. Ld. Counsel relied judgment of Hon'ble Supreme Court of India in **Maxopp Investment Ltd. vs. Commissioner of Income Tax, New Delhi (2018) 91 taxmann.com 154** in support of the contentions. It was submitted that during the year under consideration while calculating the disallowance the assessee company has considered the entire investment while the law that has developed is that only those investments on which the exempt income has been received during the year should be considered for the purpose of calculating the disallowance and there for while filing a revised disallowance of Rs. 13,03,209/- it was submitted that accordingly only the disallowance u/s 14A be allowed.

5.1 It was further submitted that Ld. AO failed to appreciate that continuing previous years practice surplus funds and internal accruals investments were made and no investment was made out of borrowed funds. It was submitted that during the year investments in Universal Learn Today Pvt. Ltd. and India Today Online Pvt. Ltd. to the extent of 73,74,44,930/- was made out of funds raised from issue of shares during the year under consideration to IGH Holdings Pvt. Ltd. to the extent of 380,74,14,506/-.

5.2 On the other hand, Ld. Sr. DR supported the findings of ld. Tax Authorities below.

6. Now perusal of paper book shows that the statement showing computation of tax payable on the basis of return show the disallowance of

expenses u/s 14A to the extent of 64,02,092/- was made and a calculation of suo moto disallowance u/s 14A r.w.r. 8D has also been filed at page no. 2 and 3 of the paper book. In regard to these grounds it can be observed that Ld. AO has not discussed a word with regard to suo moto disallowances made u/s 14A of the Act and to the contrary the Ld. CIT(A) observed in para no. 4.2.3.1 that AO has noted cogent satisfaction while working out the said disallowance u/s 14A of the Act. Further in para no. 4.2.3.2 after relying the Hon'ble Supreme Court judgment in the case of **Maxopp Investments Ltd. (supra)** sustained the additions though no reason had been mentioned as to how it applies to the facts of the case. In fact, the Ld. Tax Authorities Below, have not followed the ratio laid by Hon'ble Supreme Court of India in **Maxopp Investment Ltd.** wherein in para no. 41 it was observed :-

“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined fry The AO.”

6.1 In the case in hand also as observed and discussed above the tax authorities below have not at all taken into consideration the fact of suo moto disallowances and giving any reasons for not accepting the same.

7. Further in assessee's own case for the assessment year 2010-11 the Ld. AO had made disallowance u/s 14A and Ld. First Appellate Authority

had restricted the disallowance by not applying Rule 8D(2)(ii) of the Rules which was confirmed by the Tribunal. Then by order dated 23.03.2018 Hon'ble Delhi High Court, in ITA no. 352/2018 had passed following orders:-

“Questioning the concurrent findings of the lower Appellate Authorities, the Revenue urges that the disallowance under Section 14A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) directed to be set aside, is erroneous.

The assessee had offered Rs. 10,46,264/- as a disallowance under Section 14A of the Act towards interest free income. The Assessing Officer (AO) however rejected the amount and made a disallowance of over Rs. 4.13 crores approximately upon application of Rule 8D(2)(ii) and 8D(2)(iii). The CIT(A) restricted the disallowance amounting to Rs.9,00,621/- by holding that the application of Rule 8D(2)(ii) of the Act was not called for. The ITAT confirmed that order.

This Court has considered the Revenue’s submissions.

Clearly, the AO had fallen into error in overlooking that the assessee had deployed its own substantial part of funds to derive a tax exempt income. In these circumstances, the findings of the lower Appellate Authorities are justified.

No substantial question of law arises. The appeal is dismissed along with the pending application.”

8. The facts are identical as fresh investment have been made out of the own funds raised by issuance of fresh equity and that accumulated balance of reserve and surplus of the assessee company or the borrowed funds have not been utilized for the purpose of investment. Consequently the issue needs to be restored to the files of Ld. AO, to take into consideration the principles of law recognized in **Maxopp Investments Ltd. Case (supra)**

and assessee's own case by Hon'ble Delhi High Court in ITA no. 352/2018 for AY 2010-11 and pass a fresh order for claim of disallowance of assessee u/s 14A of the Act. These grounds are decided in favour for statistical purposes.

9. Ground no. 2 and 2.1; Ld Counsel of assessee relied judgment of Hon'ble Supreme Court of India in **South Indian Bank Ltd. vs. Commissioner of Income Tax (2021) 130 taxman.com 178 (SC)** and **S.A. Builders Ltd. vs. Commissioner of Income Tax (Appeals), Chandigarh (2007) 158 Taxman 74(SC)** and **Commissioner of Income Tax vs. Reliance Utilities and Power Ltd. (2009) 178 taxman 135 (Bombay)** to contend that when there are funds available, both interest free or loan taken, then a presumption would arise that investments would be out of interest free funds generated or available with the company provided said funds are sufficient to meet investments. Further to contend that same are allowable as business expenditure even if there was no legal obligation incurred the expenses.

10. Ld. Sr. DR however submitted that the orders passed are on merits and the assessee was unable to cite business exigencies requiring the landing of such huge amounts without interest.

11. In this context, it can be observed that from the paper book that the copy of balance sheet as on 31st March, 2013 at page no. 9 of the paper book reflects that on 31st March, 2012 reserve and surplus stood at 3,614,09,442/- on March 31, 2013 there were Rs. 299,28,41,397/-. The assessee had come with the case before Ld. Tax Authorities below as reflected in para no. 4.3.3.2 in the order of Ld. CIT(A) that assessee company had not utilized

any borrowed funds for loans and advances of Rs. 23.01 crores given to related parties, as during the year the assessee company had received a sum of Rs. 380.74 cr. against issuance of shares. The same is also reflected in the statement of increase in investments available at page no. 53 of the paper book. Thus, the assessee company has used reserve, surplus and a capital receipt against issuance of shares in loans and advances.

12. The ld. CIT(A) in para 4.3.3.3. observed that the assessee had to satisfy the assessing authority that whatever loans were raised by appellants were for the purpose of business and that the onus was on assessee to discharge before the Assessing officer that in spite of outstanding loans which the assessee is incurring liability to pay interest, there would be sufficient justification to advance the loans to sister concerns for non-business without charging any interest. Thus, primarily questioning the commercial expediency of interest free loans allowability of deduction u/s 36(1)(vii) of the Act was examined. However, it transpires from record and as discussed above the assessee had sufficient surplus funds and had raised capital during the year by issuance of shares. Thus, merely because the assessee had also raised loans or paid interest against loans that does not justify the disallowance. The investment in subsidiary and related entities has to be made for commercial purpose to earn future profits. It is not the case of revenue that investment were made in any entity not having any nexus with the principal object of assessee company. The judgment of Hon'ble Supreme Court of India in **South Indian Bank Ltd. vs. Commercial of Income Tax (supra)** also comes to the assistance of assessee where Hon'ble Supreme Court recognized the principle that if interest free own funds are available with the assessee or exceeds

investment, investment would be presumed to be made out of assessee's own fund. Thus, the Bench is convinced that the disallowance was not justified the same deserves to be deleted. The grounds are sustained.

13. Accordingly, **the appeal is allowed** and the consequences shall follow the findings in regard to grounds as stand determined in favour of appellant/ assessee.

Order pronounced in the open court on 30th June, 2023.

**Sd/-
(G.S.PANNU)
PRESIDENT**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-30.06.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI