

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 8253/DEL/2018 [A.Y. 2015-16]

M/s Maharashtra Seamless Ltd  
Plot No. 5, 2<sup>nd</sup> Floor, Pusa Road  
New Delhi

Vs. The Dy. C.I.T  
Circle -16(1)  
New Delhi

PAN: AAACM 0511 B

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv  
Ms. Supriya Mehta, CA

Department By : Shri M.K. Pandey, Sr. DR

Date of Hearing : 03.07.2023  
Date of Pronouncement : 07.07.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 6, Delhi dated 14.11.2018 pertaining to Assessment Year  
2015-16.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs. 23,08,947/- made by the Assessing Officer u/s 14A of the Income-tax Act, 1961 [the Act, for short] r.w.r 8D of the Rules.

3. Briefly stated, the facts of the case are that the assessee company is engaged in the business of manufacturing of seamless ERW Pipes and Tubes and Wind Power Generation and trading of Pipes and Tubes. During the course of assessment proceedings, the Assessing Officer asked the assessee to show cause why disallowance u/s 14A r.w.r 8D of the Act be not made in respect of investment made.

4. The assessee filed detailed reply justifying that no disallowance should be made u/s 14A of the Act.

5. Reply of the assessee was dismissed by the Assessing Officer believing that earning of exempt income is not necessary for disallowance u/s 14A of the Act. Referring to Circular No. 05/2014 dated 11.02.2014, the Assessing Officer went on to compute the disallowance u/s 14A r.w.r 8D of the Act and made addition of Rs. 23,08,947/-.

6. The assessee carried the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. counsel for the assessee vehemently stated that it is a settled law that the Assessing Officer has to verify the correctness of the assessee's claim that no expenses were incurred for earning tax free income. It is the say of the ld. counsel for the assessee that the Assessing Officer has nowhere recorded his satisfaction and has simply placed reliance on Circular No. 5/2014. Strong reliance was placed on several judicial decisions.

8. Per contra, the ld. DR stated that by observing and referring to CBDT Circular No. 5/2014, the Assessing Officer has given a satisfaction that it not necessary to have exempt income for making disallowance u/s 14A r.w.r 8D of the Act. The ld. DR strongly supported the findings of the Assessing Officer.

9. We have carefully considered the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. A perusal of the assessment order shows that nowhere the Assessing Officer has recorded any satisfaction nor there is any finding in respect

of correctness of the claim of the assessee that it has incurred NIL expenses for earning exempt income.

10. The Hon'ble Jurisdictional High Court in the case of Maxopp Investment Vs. CIT [2012] 347 ITR 272 [Delhi] had occasion to consider an identical issue and held as under:

*"First of all, A O, to ascertain the correctness of the claim of the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income under the said Act. Even where the assessee claims that no expenditure has been incurred in relation to income which does not form part of total income, the assessing officer will have to verify the correctness of such claim. In case, the assessing officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the assessing officer is to accept the claim of the assessee insofar as the quantum of disallowance under section 14A is concerned. In such eventuality, the assessing officer cannot embark upon a determination of the amount of expenditure for the purposes of section 14A (1). In case, the assessing officer is not, on the basis of objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of claim of the assessee, he shall have to reject the claim and state the reasons for doing so.*

*The above judgment is affirmed by recent judgement of Apex Court in the case of Maxopp Investment Ltd. Versus Commissioner of Income Tax, New Delhi 2018 (3) TMI 805 -SUPREME COURT OF INDIA wherein it has been held that:*

*"41) Having regard to the language of Section 14A(2) of the Act, read with Rule 80 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 mota 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 purchasing the shares/making the investment in shares is to be examined by the AO. "*

11. Respectfully following the binding decision [supra] we direct the Assessing Officer to delete the impugned addition.

12. In the result the appeal of the assessee in ITA No. 8253/DEL/2018 is allowed.

The order is pronounced in the open court on 07.07.2023.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 07<sup>th</sup> JULY, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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