आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 55/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Assistant Commissioner of Income Tax, Central Circle-1(2), Hyderabad	Vs.	M/s. Mandava Holdings Pvt. Ltd., Hyderabad [PAN No. AAFCM4964M]
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A.V.Raghuram, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 09/08/2023
घोषणा की तारीख/Pronouncement on: 17/08/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 08/12/2021 passed by the learned Commissioner of Income Tax(Appeals)-11, Hyderabad ("Ld.CIT(A)") in the case of Mandava Holdings Private Limited ("the assessee") for the assessment year 2018-19, Revenue preferred this appeal.

2. Only issue involved in this case is whether any disallowance under section 14A of the Income Tax Act, 1961 (for short "the Act") read with rule 8D of the Income Tax Rules, 1962 (for short "the Rules") could be made if the assessee had not earned any exempt income during the year under consideration.

3. Brief facts of the case are that during the year under consideration, the assessee company is mainly engaged to carry on the business as a Non-Banking Finance Company (NBFC), providing loans, Inter-Corporate Deposits (ICD) and making investments primarily within group companies to meet their business requirements and the company's income comprised mainly interest income. Assessee also made investments in subsidiary companies for furthering its business connections.

4. During the course of scrutiny of the return of income filed by the assessee for the assessment year 2018-19, learned Assessing Officer found that the assessee incurred interest expense to the tune of Rs. 74.45 crores and at the same time it made investments to the tune of Rs. 7,821 crores and thereby an inference was drawn to the effect that the assessee had incurred interest expenditure towards borrowings utilised for the purpose of investment and earning of exempt income. While referring to the provisions of 14A of the Act read with Rule 8D of the Rules and CBDT Circular No. 5/2014, dated 11/2/2014 and by invoking section 14A of the Act read with rule 8D of the Rules, made addition of Rs. 14,80,07,977/-.

5. Assessee preferred appeal and argued that no such disallowance can be made since it has not earned any exempt income in the year under consideration. Learned CIT(A), as a matter of fact, noted that there is no exempt income earned by the assessee during the year under consideration and while following the view taken by a Co-ordinate Bench of the Tribunal in the case of DCIT vs Maheswari Mega Ventures Ltd in ITA No. 367/Hyd/2013 dated 03/02/2017, reached the conclusion that no such

disallowance could be made and directed the learned Assessing Officer to delete the same.

6. Revenue, therefore, preferred this appeal before us and contended that the assessee invested in group companies and in terms of the decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd vs. CIT (2018) 91 taxmann.com 154, when the assessee knows it well that the investment which it make in the group companies would yield dividend, the assessee would necessarily earn such dividend and therefore, it is not the quirk of weight that the assessee received the dividend declared by the investee company, during the period in which the assessee holds such shares.

7. The learned DR placed reliance on the decisions in Maxopp Investment Ltd (Supra) and the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Kingfisher Finvest India Ltd (2020) 121 taxmann.com 232 (Kar.) in support of his contention that the deletion of addition cannot be sustained.

8. Per contra, learned AR submitted that the view taken by the learned CIT(A) is legal and in accordance with the provisions of law and, therefore, the same cannot be interfered with. He placed reliance on various decisions of the Tribunal and also the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) and PCIT vs. Delhi International Airport (P.) Ltd., (2022) 144 taxmann.com 80 (Delhi). He further submitted that in assessee's own case for the assessment years 2016-17 & 2017-18 by order dated 26-09-2022 a Co-ordinate Bench of the Tribunal held the issue in favour of the assessee.

9. We have gone through the record in the light of the submissions made on either side. There is no dispute that the assessee is a non-banking finance company, making investment in the group companies to meet

their business requirements. In such a situation, it is beyond doubt that whenever the investee company declares dividend, such dividend would invariably be earned by the assessee and the assessee alone. It is not a case where only by chance the shares would be in the hands of the assessee when such a dividend is declared. If the assessee holds these shares as stock-in-trade, to be liquidated whenever the share price goes up in order to earn profits, then it would be possible that during such holding, the investee company may declare dividend.

10. It is, therefore, clear that the purpose of assessee holding the shares is not to liquidate when the share price goes up and thereby to earn profit, but the assessee holds such shares in the group companies to meet the business requirements of such companies. Assessee is bound to receive the dividend when it is declared. Therefore, the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd (Supra) as followed by the Hon'ble Karnataka High Court in the case of Kingfisher Finvest India Ltd (Supra) is applicable to the facts of the case.

11. Argument of the learned Counsel that the issue is held in favour of the assessee in assessee's own case for earlier assessment years does not hold much water. A careful reading of order cited makes it clear that for the earlier assessment years, this fact of assessee investing in group companies for the business requirements was not brought to the notice of the Bench by either side. When once it has come to the notice of the Bench, it is not possible to perpetuate the mistake occurred on earlier occasion. It is the settled principle of law, as observed by the Hon'ble Apex Court in the case of Distributors (Baroda) (P.) Ltd. vs. Union of India that there is no heroism to perpetuate an error and to rectify such an error is a compulsion of the judicial conscious. Errors cannot be perpetuated on the name of consistency.

12. In these circumstances, we find it difficult to follow the view taken in the appeals for the assessment years 2016-17 & 2017-18. We

accordingly find it difficult to sustain the impugned order. The same is liable to be set aside, and the order of the Assessing Officer has to be restored. We hold and direct so.

13. In the result, appeal of the Revenue is allowed.

Order pronounced in the open court on this the 17th day of August, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 17/08/2023

TNMM

Copy forwarded to:

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3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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