

**Income Tax Appellate Tribunal
Delhi Bench "E": New Delhi
Before Shri M. Balaganesh, Accountant Member
and
Shri Anubhav Sharma, Judicial Member**

ITA No. 1731/Del/2023
(Assessment Year: 2018-19)

DCIT, Central Circle-13, New Delhi (Appellant) PAN: AAACL1433F	Vs.	Minda Investments Ltd, B-64/1, Wazirpur Industrial Area, New Delhi, Delhi (Respondent)
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Assessee by :	Shri Harish Dhamija, CA Shri R. K. Kapoor, CA
Revenue by:	Ms. Sangeeta Yadav, Sr. DR
Date of Hearing	04/10/2023
Date of pronouncement	10/10/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 1731/Del/2023 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 26/10525/2017-18 dated 31.03.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.05.2021 by the Assessing Officer, ACIT, Central Circle-13, New Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal :-

"I. Whether on the facts and in law, the Ld.CIT(A) is correct in partially allowing the appeal of the assessee by restricting the addition of Rs. 1,88,46,051/- to Rs 31,11,642/- made on account of disallowance u/s 14A of the Income Tax Act, 1961 by stating that the average value of investments, where income is exempt during the concerned AY, amounted to Rs. 31.11.642/- only despite the fact that such break-up was not provided by the assessee during the course of assessment proceedings.

II. Whether on the facts and in law, the Ld.CIT (A) is correct in ignoring that the assessee has not filed any documentary evidence to prove that the borrowed funds were not utilized by the assessee company towards investments and the investment made are strategic in nature and, no direct or indirect expenditure is incurred.

III. Whether on the facts and in law, the Ld.CIT(A) is correct in ignoring the provisions of section 14A read with Rule 8 which do not allow the deduction for expenses attributable to the exempt income from the taxable incomes as it would lead to reducing the taxable income of the assessee, if expenses related to exempt income are reduced from it.

IV. Whether on the facts and in law, the Ld.CIT(A) is correct in calculating the amount of disallowance u/s 14A based on the average value of investments, where income is exempt is received during the concerned A.Y. ignoring the fact that provisions of section 14A shall apply and shall be deemed to have always applied irrespective of the fact that assessee has received exempt income during the concerned A.Y. or not, if expenditures have been incurred in that year in relation to all corresponding investments.

V. Whether on the facts and in law, the Ld.CIT(A) is correct in ignoring the basic principle of taxation where gross income minus expenditure i.e net income is only taxed and accordingly, exemption can only be claimed for net exempt income as expenses attributable to earning the exempt income should not reduce the taxable income of the assessee for a particular year."

3. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in considering the only those investments which had yielded exempt income earned by the assessee while computing the disallowance u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of lease, finance and investments. The assessee earned exempt income of Rs. 5,01,32,136/- during the year under consideration from the investments made. It is not in dispute that the assessee had made investments which yielded exempt income and investments which had not yielded any income to the assessee. The assessee made suo moto disallowance of expenses of Rs. 25,06,607/- u/s 14A of the Act in the return of income. The basis of this disallowance was at 5% of dividend income considered on ad hoc basis. The Id AO ignored the suo-moto disallowance made by the assessee and proceeded to invoke the revised computation mechanism provided in the Rule 8D(2) of the Rules effective from

01.06.2016 and arrived at disallowance of Rs. 1,63,39,444/- which was worked out by considering 1% of average value of total investments made by the assessee (i.e. investments yielded exempt income as well as investments which did not yield any income). The Id CIT(A) reworked disallowance u/s 14A of the Act by considering 1% average value of investments which had actually yielded exempt income to the assessee during the year under consideration. Aggrieved by this action, the revenue is in appeal before us.

5. The Id DR before us relied on amendment to section 14A of the Act brought by way of explanation inserted by the Finance Act, 2022 w.e.f 01.04.2022 and CBDT Circular No. 5/2014 dated 10.02.2014 by stating that all the investments should be considered for the purpose of computing the disallowance of expenses u/s 14A of the Act. The Id DR also argued that the said amendment brought in by the Finance Act, 2022 is merely clarificatory in nature and has to be given retrospective application. We find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd Vs CIT reported in 402 ITR 640 had already held that for the purpose of computing the disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules, only those investments which had yielded exempt income to the assessee should be considered. Further, we find that the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Era Infrastructure India Ltd reported in 141 taxmann.com 289 (Del) had held that amendment made by the Finance Act, 2022 to section 14A inserting a non obstante clause and explanation will take effect from 01.04.2022 and cannot be given retrospective effect. Respectfully following the aforesaid judicial precedents, we do not find any infirmity in the order passed by the Id CIT(A). Accordingly, grounds raised by the revenue are dismissed.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10/10/2023.

-Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/10/2023

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi