

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
(VIRTUAL HEARING)

आयकर अपील सं. /ITA No.1117/PUN/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Deepak Pandurang Gadre, 3298 A, Gadre Marine Export, Mirkarwada, Ratnagiri, Maharashtra – 415 612 PAN : ABHPG2085K	Vs.	The ACIT, Central Circle, Kolhapur
Appellant		Respondent

Assessee by Shri Tanzil R. Padvekar
Revenue by Shri Arvind Desai

Date of hearing 07-11-2023
Date of pronouncement 07-11-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order dated 30-08-2023 passed by the Id. CIT(A) in National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2017-18.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.17,52,720/- made by the Assessing Officer (AO) u/s.14A of the Act.

3. Briefly stated, the facts of the case are that the assessee filed the return declaring Nil income. During the course of assessment proceedings, the AO observed that the assessee had made substantial investment in shares of companies yielding exempt income but no disallowance was offered u/s.14A of the Act. Not satisfied with the assessee's submissions, the AO made the disallowance amounting to Rs.17,52,712/- under Rule 8D(2)(ii) at 1% of the annual average value of investments. No succour was provided in the first appeal, against which the assessee has approached the Tribunal.

4. I have heard the rival submissions and perused the relevant material on record. The first contention advanced on behalf of the assessee is that the AO did not record any satisfaction and hence disallowance u/s.14A should be deleted. In this regard, it is observed that the assessee did not offer any disallowance despite earning exemption income from the shares and securities. The AO in para 4 had recorded satisfaction that the assessee made substantial investment in shares of the company but did not offer any disallowance.

5. Be that as it may, it is found as an admitted position that the assessee did not offer any disallowance u/s 14A. The Hon'ble Supreme Court in *Maxopp Investment Vs. CIT (2018) 91 taxmann.com 154 (SC)* has considered the aspect of recording of satisfaction by the

Assessing Officer for making disallowance u/s 14A and has laid down in para 41 as under:-

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 by the AO.

6. It is palpable from the judgment of the Hon'ble Summit Court that: *“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.”* It, therefore, becomes clear that only where the assessee offers some disallowance u/s 14A with which the Assessing Officer is not satisfied, then he needs to record a proper satisfaction before proceeding to make disallowance u/s 14A. If, on the other hand, the assessee does not offer any disallowance u/s 14A, the requirement of recording satisfaction by the Assessing Officer will be dispensed with. The facts of the instant case are covered by the mandate in this case inasmuch as the assessee had not offered any disallowance u/s 14A of the Act. In view of the fact that the Assessing Officer properly recorded satisfaction u/s 14A of the Act,

despite there being no such requirement as laid down by the Hon'ble Supreme Court in the case of *Maxopp Investments Ltd.*, I am convinced that the Id. AR's contention on this aspect deserves not to be accepted. Similar view has been taken by the Pune Tribunal in several cases and the Delhi Tribunal in *Excel Infotech Ltd. vs. DCIT* in ITA Nos.3492 to 3494/Del/2014 vide its order dated 25.4.2018. I order accordingly.

7. Proceeding further, it is noted from the impugned order that the assessee earned exempt income of Rs.40,750/- against which disallowance u/s.14A read with Rule 8D has been made at Rs.17,52,712/-. The Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC*.

8. It is seen that an amendment has been carried out to section 14A by the Finance Act, 2022 providing that the disallowance u/s 14A would be called for notwithstanding no receipt of exempt income during the year. The Hon'ble Delhi High Court in *Pr.CIT Vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi)* has held such amendment to be prospective. In that view of the matter, the case

pertaining to the A.Y. 2017-18 under consideration, the assessee having earned tax free dividend of Rs.40,750/-, will be governed by the ruling in *Cheminvest (supra)*. Respectfully following the precedent, I order to restrict the disallowance to Rs.40,750/-.

9. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 07th November, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th November, 2023
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
SMC, Pune / DR, ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	07-11-2023	Sr.PS
2.	Draft placed before author	07-11-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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