

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.892/Bang/2024
Assessment year : 2014-15

Subramanya Constructions & Development Company Ltd., No.42, 2 <sup>nd</sup> Stage, 3 <sup>rd</sup> Cross, Industrial Suburb, Yeshwanthpur, Bangalore – 560 022. <b>PAN : AADCS 1525J</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 6(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri T.S. Rajan, CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.06.2024
Date of Pronouncement	:	02.07.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 30.3.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 against disallowance u/s. 14A of the Act.

2. Briefly stated the facts of the case are that the assessee filed return of income on 29.11.2014 declaring income of Rs.17,48,03,210.

The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. In response to notices, the assessee filed submissions and it was noticed that there is closing balance in the balance sheet on investment in shares of Rs.61,71,89,269 in three companies. It was also noted that assessee has debited interest of Rs.43,14,10,974 on term loan, however, the assessee has not disallowed any interest u/s. 14A while computing its income. In this regard, the assessee was asked to substantiate its case against proposal to disallow expenditure attributable to these investments. In this regard, the assessee submitted that investments were made prior to the previous year under consideration and no disallowance of interest expenditure could be made in the current year and relied on the judgment of jurisdictional Karnataka High Court in the case of *CIT v. Sridev Enterprises, 192 ITR 165 (Karn)*. The assessee also submitted that investments which have not yielded any exempt income cannot be considered for disallowance. Disallowance can be made only to the extent of exempt income received and relied on coordinate Bench of the Tribunal decision in the appellant's own case for AY 2009-10 in ITA No.404/Bang/2013 & CO 89/Bang/2013, order dated 20.02.2015 wherein the issue was decided in favour of the assessee.

3. The AO after discussing the provisions of section 14A computed disallowance under Rule 8D(2)(ii) of Rs.2,52,97,176 and under Rule 8D(2)(iii) of Rs.30,86,669, resultantly he made total disallowance of Rs.2,83,83,845. He made a further disallowance of Rs.43,60,609 towards interest on income tax refund and completed the assessment.

4. On appeal, the CIT(Appeals) dismissed the appeal of assessee regarding disallowance u/s. 14A. Against this, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated the submissions made before the lower authorities and submitted that during the impugned year the assessee has not made any fresh investments and no exempt income was received which is clear from the financial statements and no disallowance u/s. 14A could be made and relied on the judgments noted supra.

6. The Id. DR relied on the order of lower authorities.

7. Considering the rival submissions, we note that during the impugned year, the AO has calculated disallowance u/s. 14A r.w. Rule 8D(2)(ii) & (iii) of Rs.2,83,83,345. Considering the entire facts of the case, we note from financial statements that the assessee has not received any exempt income during the year and therefore no disallowance could be made. This view is supported by the judgment of jurisdictional High Court in the case of *PCIT v. Delhi International Airport P. Ltd.* [2022] 138 taxmann.com 112 (Kar) dated 25.05.2021 in which it is held as under:-

“ 6. The order dated 15-2-2021 passed in ITA No.133/2015, in paragraphs 11 to 14 reads as under;

"11. We have considered the submissions made on both sides and have perused the record. Substantial questions of law Nos. 1 and 3 are interlinked, therefore, we proceed to deal with the same together. Before proceeding further it is apposite to take note of

the relevant statutory provisions which are reproduced below for the facility of reference :

"Section 14A: Expenditure incurred in relation to income not includible in total income.—For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

.....

14. Now we may advert to the second substantial question of law. It is pertinent to note that for Assessment Year 2009-10 the assessee has not earned dividend income. The aforesaid fact has not been disputed by the revenue. It is also relevant to mention that Circular No. 5/2014 dated 11-2-2014 is not applicable in the instant case as the instant case pertains to Assessment Year 2009-10. The aforesaid Circular has no retrospective operation. It is noteworthy that aforesaid Circular was not even relied by the parties. This court in Commissioner of Income Tax v. Kingfisher Investment India Ltd. vide judgment dated 29-9-2020 inter alia held that disallowance under section 14A read with rule 8D has to be made even when taxpayer in a particular year has not earned any exempt income. This court relied on the decision of the Supreme Court in Maxopp Investment Ltd. (supra) which was reproduced in Paragraph 5 of the decision and reliance was also placed on Circular dated 11-2-2014 issued by Central Board of

Direct Taxes (CBDT). However, the aforesaid decision was subsequently considered by this court in judgment dated 16-1-2021 passed in I.T.A.No.271/2017 (Principal Commissioner of Income Tax v. Novel Software Development) in which it was held that decision of this court in Kingfisher Finvest Ltd. was distinguishable as the basis of the aforesaid decision of this court was the decision of the Supreme Court in Maxopp Investments Ltd. supra and it was held that the aforesaid decision does not deal with applicability of section 14A of the Act. However, eventually this court agreed with the view taken by High Court of Madras in CIT v. Chettinad Logistics (P.) Ltd., (2017) 80 taxmann.com 221 (Mad.) and Kem Invest Ltd. v. CIT, (2015) 16 taxmann.com 118 (Delhi) and held that since no exempt income has accrued to the assessee therefore, the provisions of section 14A of the Act do not apply to the fact situation of the case. Therefore, it has become necessary for us to clarify the view taken in the two decisions viz., Kingfisher Finvest India Ltd. and Novel Software India (P) Ltd. supra. At this stage, we may refer to Paragraph 40 of the decision of the Supreme Court in Maxopp supra, the relevant extract of which reads as under:

It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to the deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even that the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes upon order to earn profits. In the result, the appeals filed by the revenue challenging the judgment of the Punjab and Haryana

High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.

15. From perusal of the relevant extract of the Supreme Court, it is evident that the decision in Maxopp Investment Ltd. supra deals with applicability of Section 14A of the Act. Therefore, the observations made with regard to applicability of section 14A in M/S. Novel Software India (P.) Ltd. are factually incorrect and we hasten to clarify the same. However, from relevant extract of Paragraph 40, it is evident that only expenses proportionate to earning of exempt income could be disallowed under section 14A of the Act and the decision of Maxopp Investment Ltd. is an authority for the aforesaid proposition that the provision is relatable to earning of actual income. The object of section 14A is to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The High Court of Madras has relied on the decision of the Supreme Court in Commissioner of Income Tax v. Walfort Share and Stock Brokers (2010) 326 ITR 1 wherein it has been held that Section 14A is relatable to income of actual income or not notional or anticipated income. Therefore, the conclusion arrived at by us in Novel Software India (P.) Ltd. is affirmed but for different reasons. It is also clarified by us that while recording the conclusion in Kingfisher Finvest Ltd. that disallowance under section 14A has to be made even taxpayer has not earned any exempt income, this court has misread the ratio of the decision of the Supreme Court in Maxopp Investment Ltd. supra and therefore, the aforesaid view being contrary to the law laid down by the Supreme Court is not a binding precedent.

In view of preceding analysis, the second substantial question of law is also answered against the revenue and in favour of the assessee. In the result, we don't find any merit in this appeal, the same fails and is hereby dismissed.'

7. In light of the aforesaid judgment passed in ITA No. 133/2015, the question of law is answered in favour of the assessee and against the revenue. Resultantly, the appeal stands dismissed. ”

8. Against the above judgment, the revenue preferred SLP before the Hon'ble Apex Court and Hon'ble Apex Court has issued notice, reported in [2022] 138taxmann.com 113 (SC) & in another case reported [2022] 142 taxmann.com 328 (SC). Since both the parties could not bring the status of the case before the Hon'ble Apex Court, therefore, respectfully following the judgement of the jurisdictional High Court *PCIT v. Delhi International Airport P. Ltd.* noted supra we allow the appeal of the assessee.

9. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 02<sup>nd</sup> day of July, 2024.

( BEENA PILLAI )  
JUDICIAL MEMBER

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the .... July, 2024.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.