

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D' BENCH, MUMBAI**

**MS. PADMAVATHY S, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2423/MUM/2024
(Assessment Year: 2018-19)**

Reliance Brands Limited,
Palm Court Building M,
5th Floor, Court House,
Kalbadevi,
Mumbai – 400 002.
Maharashtra.
[PAN:AADCR7395F]

..... **Appellant**

Vs

**Principal Commissioner
of Income Tax - 8, Mumbai**
Room No.611, 6th Floor,
Aayakar Bhavan, Maharishi Karve Road,
Mumbai – 400 020. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Nimesh Vora
Ms. Moksha

For the Respondent/Department : Shri Nayanjyoti Nath

Date

Conclusion of hearing : 24.07.2024
Pronouncement of order : 09.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the order, dated 21/03/2024, passed by the Principal Commissioner of Income Tax -8, Mumbai - 400 020 [hereinafter referred to as the '**PCIT**'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Assessment Order, dated 09/05/2021, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2018-19 was set aside as being

erroneous in so far as prejudicial to the interest of Revenue.

2. The Appellant has raised following grounds of appeal :

"Reliance Brands Limited ('Appellant') respectfully craves leave to prefer an appeal against the order dated 21 March 2024 passed by the Hon'ble Principal Commissioner of Income Tax-8, Mumbai (hereinafter referred to as the 'learned PCIT') under Section 263 of the Income Tax Act, 1961 ('Act') on the following ground:

On the facts and in the circumstances of the case, and in law, the learned PCIT;

Order under Section 263 of the Act is bad in law and is void

1. *Erred in setting aside the assessment completed u/s.143(3) as erroneous and prejudicial to the interest of the revenue.*
2. *Erred in deeming the order u/s.143(3) as erroneous and prejudicial to the interest of the revenue in view of explanation 2 to Section 263 of the Act without appreciating that the AO had duly examined all relevant facts at the time of assessment proceedings with due application of mind.*

Disallowance of Expenses under Section 14A read with Rule 8D of the Income Tax Rules, 1961

3. *Erred in holding that disallowance under section 14A of the Act shall be made even in the absence of earning of exempt income.*

The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit at any time before or during the hearing of the above appeal and further crave leave to consider each of the ground of appeal as without prejudice to each other."

3. Ground No.1 and 2 raised by the Appellant challenge the validity of the order passed by the Learned PCIT under Section 263 of the Act.
- 3.1. The relevant facts in brief are that assessment was framed on the Appellant for the Assessment Year 2018-19 under Section 143(3) of the Act vide Assessment Order, dated 09/05/2021. Subsequently,

the PCIT formed a view that disallowance under Section 14A should have been made in the case of the Assessee since the Assessee had made substantial investment in shares during the relevant previous year which can generate exempt income. The fact that no exempt income has been earned during the relevant previous year was not relevant for the purpose of making disallowance under Section 14A of the Act. Therefore, notice under Section 263(1) of the Act was issued to the Appellant on 12/09/2023. In response, the Appellant filed reply letter dated 22/09/2023, objecting to the proposed exercise of power of revision by the PCIT under Section 263 of the Act. However, the Ld. PCIT rejected the contentions raised and passed order, dated 21/03/2024, setting aside the Assessment Order, dated 09/05/2021, passed under Section 143(3) of the Act.

- 3.2. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal.
- 3.3. We have heard both the sides and perused the material on record.
- 3.4. The contention advanced on behalf to the Appellant that assessment order cannot be regarded as prejudicial to the interest of Revenue. During the relevant previous year, the Appellant did not earn any exempt income during the relevant previous year, and therefore, the question of making disallowance under Section 14A did not arise. Further, during the assessment proceedings, the Assessing Officer had carried out detailed enquiry/investigation raising specific enquires in relation expenditure incurred for earning the earning exempt income and after taking into consideration the submission made by the Appellant, the Assessing Officer decided not to make any disallowance under Section 14A of the Act. Therefore, the provisions of Explanation 2 to Section 263 of the Act could not have been invoked in the facts of the present case by the Learned PCIT.

Without prejudiced to the above, it was also submitted on behalf of the Appellant that the view taken by the Assessing Officer was a plausible view and therefore, the Learned PCIT could not have passed an order substituting his own opinion in place of the plausible view taken by the Assessing Officer.

- 3.5. Per contra the Learned Departmental Representative relied upon the order passed by the Learned PCIT and submitted that the powers of revision were correctly exercised by Learned PCIT by invoking Explanation 2 to Section 263 of the Act having regard to the facts and circumstances of the present case. Reliance was placed on the Circular No.5 of 2014, dated 11/02/2014, issued by Central Board of Direct Taxes (CBDT) and provisions contained in Rule 8D of the Income Tax, 1962 [for short '**IT Rules**'] to support the contentions that even if no exemption on the exempt income was earned by the Assessee during the relevant previous year still disallowance was to be made under Section 14A of the Act.
- 3.6. Having given thoughtful consideration to the rival submissions, we find merit in the contentions advanced on behalf of the Appellant which are supported by the documents on record as part of the paper-book filed by the Appellant. On perusal of the Assessment Order, dated 09/05/2021, we find that the case of the Appellant was selected for Scrutiny under Section 143(3) by Computer Aided Scrutiny Selection [CASS] procedure. One of the grounds for scrutiny selection as stated in the notice, dated 22/09/2019, issued under Section 143(2) of the Act was 'expenses incurred for earning the exempt income'. In response to the aforesaid notice, the Appellant filed reply, dated 09/04/2020, before the Assessing Officer giving detailed explanation in relation to expenses incurred for earning exempt income. It was explained by the Appellant that during the relevant previous year the Appellant-Company had not

received or earned any income and therefore, no disallowance under Section 14A of the Act was warranted. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of CIT Vs. Vs. Maxopp Investment Private Limited [402 ITR 640 SC] to contend that disallowance under Section 14A of the Act shall be restricted to the exempt income earned by the Assessee. Reliance was also placed on the Judgment of Hon'ble Supreme Court in the case of GVK Project and Technical Services Ltd. Vs. PCIT [2019] 106 taxmann.com 181 and the Judgment of Hon'ble Delhi High Court in PCIT Vs. McDonald's India Pvt. Ltd. [ITA 725/2018, dated 22/10/2018]. Subsequently, the Assessment was transferred from the Jurisdictional Assessing Officer to Faceless Assessing Officer. Thereafter, notice under Section 142(1) was issued by National e-assessment Centre, Delhi on 24/11/2020. In response to Query No.18 raised by way of the aforesaid notice, the Appellant, vide letter dated 22/01/2021, stated that during the relevant previous year no exempt income was earned by the Appellant. It was also stated that all expenses debited to the Profit and Loss Account were directly related to the business of the Appellant and that no expenses were incurred for earning exempt income. Therefore, on the basis of aforesaid it can be seen that specific queries in relation to expenditure incurred to earn the exempt income were raised upon the Appellant during the assessment proceedings. In response to the aforesaid queries, the Appellant had clearly stated that no exempt income was earned by the Appellant during the relevant previous year and therefore, no disallowance could have been made under Section 14A of the Act. The Appellant had also supported the submissions by way of judicial precedents including the judgment of Hon'ble Supreme Court in the case of Maxopp Investment Private Limited (supra). We note that the Learned PCIT had relied upon Explanation 2 to Section 263 of the Act while setting aside the Assessment Order. According to the Learned PCIT, mere filing of the

details was not sufficient and therefore, the provisions contained in Explanation 2 to Section 263 of the Act would be attracted in the facts of the present case. On perusal of Explanation 2 to Section 263(1) of the Act, we find that it provides that an Assessment Order shall be deemed to be erroneous in so far as prejudicial to the interest of Revenue in case in the opinion of the concerned authorities, the assessment order has been passed without making enquiries or verification which should have been passed; or the order has been passed allowing any relief without enquiry into claim. In our view, the aforesaid conditions are not attracted in the facts of the present case. On perusal of the documents placed before us as part of Paper-Book filed by the Appellant including copy of notice dated 22/09/2019 issued under Section 143(2) of the Act, reply letter dated 09/04/2020 filed by the Appellant, notice dated 24/11/2020 issued under Section 142(1) of the Act and reply thereto filed by the Appellant on 22/01/2021, we find that the Assessing Officer had made relevant/specific enquiries before accepting the contentions of the Appellant. Further, all the relevant facts were already before the Assessing Officer as part of the assessment record, and therefore, no further inquiry/verification was necessary in the facts of the present case. Further, in the case of Pr.CIT Vs. State Bank of Patiala [2018] 259 Taxman 314 (SC) the Hon'ble Supreme Court has held that disallowance under Section 14A of the Act is to be restricted to the amount of exempt income. Therefore, the view taken by the Assessing Officer cannot be recorded as erroneous. Further, even if for the sake of arguments, the interpretation of the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Private Limited (supra) adopted by the Ld. PCIT is accepted, still the Learned PCIT would not have jurisdiction to exercising powers of revision under Section 263 of the Act as the view taken by the Assessing Officer would be regarded as a plausible view. As a result, the Ld. PCIT would be precluded from

substituting her own opinion in place of the Assessing Officer. Accordingly, accepting the contentions raised by the Appellant, we set aside the order, dated 21/03/2024, passed by the Learned PCIT under Section 263 of the Act and restore the Assessment order, dated 09/05/2021, passed by the Assessing Officer for the Assessment Year 2018-19 under Section 143(3) read with Section 144B of the Act.

4. In view of the above, Ground No.1 and 2 raised by the Appellant are allowed
5. Since we have allowed Ground No. 1 & 2 raised by the Appellant, Ground No. 3 raised by the Appellant is dismissed as having been rendered infructuous.
6. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 09.10.2024.

Sd/
(Ms Padmavathy S)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 09.10.2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai