IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1031/Bang/2024
Assessment year : 2014-15

Manipal Health Enterprises Private Limited, The Annexe, # 98/2, Rustam Bagh, HAL Airport Road, Bangalore – 560 017. **PAN: AAGCM 5933R**	Vs.	The Assistant Commissioner of Income Tax, Circle 2(3)(1), Bangalore.
APPELLANT		RESPONDENT

ITA No.1208/Bang/2024
Assessment year : 2014-15

The Deputy Commissioner of Income Tax, Central Circle 1(2), Bangalore.	Vs.	Manipal Health Enterprises Private Limited, Bangalore – 560 017. **PAN: AAGCM 5933R**
APPELLANT		RESPONDENT

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ITA No.1092/Bang/2024
Assessment year : 2018-19

Manipal Health Systems Private Limited, 24/1, 15th Floor, JW Marriott, Bangalore – 560 001. **PAN: AACCM 2872M**	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(2), Bangalore.
APPELLANT		RESPONDENT

Assessees by	:	Shri S.K. Tulsiyan & Ms. Bhoomija Verma, Advocates.
Revenue by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	01.10.2024
Date of Pronouncement	:	24.10.2024

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

The cross appeals for the AY 2014-15 in the case of Manipal Health Enterprises P. Ltd. are filed by the assessee and revenue against the order dated 29.03.2024 of the CIT(Appeals)-15, Bangalore. The assessee in the case of Manipal Health Systems P. Ltd. has also filed appeal against the order dated 29.03.2024 of the CIT(Appeals)-15, Bangalore for the AY 2018-19.

2. In both the appeals for AY 2014-15 & 2018-19, the identical issue raised by the assessees relates to the addition made u/s. 14A r.w. Rule 8D of the Act despite the assessee's submission that it had sufficient own funds in the form of retained earnings and not out of borrowed funds and despite the categorical denial by the assessee that it had not incurred any expenditure for earning any exempt income.

3. The assessees have also raised identical additional ground in both the appeals that the satisfaction of the AO is sine qua non for invoking application of section 14A r.w. Rule 8D. This ground goes to the root of the matter and hence following the Hon'ble Supreme Court judgment in the case of M/s National Thermal Power Co. Ltd. Vs. CIT,

229 ITR 383 (SC), the additional ground which is identical for both the years is admitted for adjudication.

4. We are taking first the appeal of AY 2014-15 and this decision will apply mutatis mutandis to the AY 2018-19 also. Briefly stated the facts of the case are that the assessee filed return of income on 28.11.2013 declaring income of Rs.40.82 crores. The case was selected for scrutiny and statutory notices issued to the assessee. It was noticed that the assessee has huge investments in mutual funds and shares leading to earn income which is not part of total income. In this regard, assessee was asked to furnish the expenditure incurred towards earning of exempt income. The assessee claimed that there is no direct expenses involved and assessee is claiming few expenses in income & expenditure account like telephone, mobile expenses, audit fee & general expenses. The AO noted that some portion of these expenditure is utilized to earn that income and it is difficult to bifurcate the expenses. Hence show cause notice was issued as to why s. 14A r.w. Rule 8D(2) should not be invoked and the ld. AR agreed for the same. Accordingly the AO concluded the disallowance under Rule 8D2(iii) of Rs.39,27,405. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

5. The ld. FAA after discussing the issue in detail confirmed the addition u/s. 14A. Aggrieved, the assessee is in appeal before the ITAT.

6. The ld. AR argued on the additional ground and filed written submissions. The relevant portion of written submissions for AY 2018-19 are as under:-

> " 8. It is submitted that as per law, the Ld.AO has to first record a finding that he is not satisfied with the correctness of the claim of expenditure, having regard to the accounts, made by the Appellant in relation to exempt income. The Appellant humbly submits before your goodself that the satisfaction of the Ld. AO as to the incorrect claim made by the assessee in this regard is sine qua non for invoking the applicability of Rule 8D.
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> 9. Such satisfaction can be reached and recorded only when the claim of the Appellant is verified. Furthermore, in case it is proven that the Appellant has not incurred any expenditure in respect of earning the exempt income, then there is no requirement to still proceed with the computation of the amount disallowable as per Rule 8D of the Rules. In the present case, the Ld. AO has proceeded on the premise - as if the disallowance as per Rule 8D is automatic irrespective of the genuineness of the Appellant's claim that no expenses have been incurred in relation to exempt income.
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> 10. It is apropos to mention here that the Ld. AO while making the said disallowance did not specify/map any expenses having been made for earning exempt income, rather he has made a general and vague observation that assessee has incurred expenses under the head miscellaneous etc. expenses which is attributable to the direct expenses incurred by the assessee. (Para 10(1) of the assessment order).
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> 11. The Ld. AO has also stated that the case law cited by the assessee is distinguishable because here the assessee has accepted that disallowance u/s 14A of the Act 1961 r.w.r 8D of the IT Rules 1962, hence disallowance should be made: (Relevant para quoted below, Para 10(1) of the assessment order):
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> "iii) The case law cited by the assessee is distinguishable because here the assessee itself has accepted that disallowance u/s 14A of the I T Act 1961 rwr 8D of the I T rules 1962 should be made

amounting to Rs. l6,64,429/- during the course of assessment and later retracts. Further, from the P & L A/c and the audited accounts of the assessee it is seen that the assessee has incurred expenses under the head miscellaneous etc. which is attributable to the direct expenses incurred by the assessee."

12. At this juncture it is submitted that Appellant never acceded to the disallowance @ 1 percent based on monthly average balance of opening and closing value of investments. The Appellant only submitted the calculation following Rule 8D which anyone having the relevant figures could have done.

13. The Appellant while objecting to the disallowance relied on the pronouncement of Hon'ble Jurisdictional High Court in the matter of CIT v. Syndicate bank reported at 115 taxmann.com 287 (Karnataka) dated 17.01.2020 where in it was held that where no expenditure has been incurred for earning exempt income – no disallowance can be made for expenditure. *****

14. The Ld. AO in order to brush aside the binding weight put on by the judgement of Hon'ble Jurisdictional High Court banked on the further appeal made by the Department against Syndicate Bank (supra) before the Hon'ble Supreme Court in Diary No. 28597 of 2020. It is pertinent to note that the Hon'ble Supreme Court has rejected the Departments Appeal in the matter Commissioner of Income Tax & Anr. v. Syndicate Bank (Civil Appeal 522 of 2021) in its Order dated 21.03.2024. *****

15. Reference in this connection is also craved to the judgment of the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (2017) 151 DTR (SC) 89 (copy also attached in the Paper Book of Case Laws) wherein the Hon'ble Apex Court observed that without assigning any specific reasons, and without establishing a nexus between the expenditure disallowed and dividend income earned – any disallowance u/s 14A r.w.r. 8D(2) cannot be invoked.

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16. It is the case of the Appellant that the Ld. AO while making the disallowance in the Appellant's case did not record his satisfaction about the correctness of expenditure claimed by

the Appellant – and has rather made a cloudy observation that assessee has incurred expenses under the head miscellaneous etc. which is attributable to direct expense incurred by the assessee. This is however impermissible in light of the decision in the matter of Godrej & Boyce (supra), wherefrom it can be seen that the Bench had clearly held in the above case that although Section 14A read with Rule 8D prescribes disallowance of expenditure incurred in relation to exempt income, it does not permit notional ascription of expenses in view of earning of dividend income when in actual fact no expenses were incurred.

17. The satisfaction of the Ld.A.O. has to be arrived at by having regards to the accounts of the Appellant. Section 14(2) read with Rule 8D(2) does not ipso facto enable the Ld.A.O. to apply the method prescribed by the Rules straightway without considering the claim made by the Appellant in respect of the expenditure incurred in relation to income which does not form part of the total income. The Ld.A.O. must, in the first instance, determine whether the claim of the Appellant in that regard is correct and such determination must be made after having regarded the submissions of the assessee and the audited accounts. Therefore, the satisfaction of the Ld.A.O. must be arrived at on an objective basis only vis-a-vis why the claim of the Appellant is unacceptable. The same however is missing in the case at hand.

18. The main requisite for making disallowance under Rule 8D(2) read with Subsection 14A(2) of the Act is finding a "proximate cause" i.e. a relationship between the expenditure incurred and the exempt income. The underlying objective of Section 14A read with Rule 8D is that "If an income which does not form part of the total income, then the related expenditure is liable to be disallowed". Attention in this respect is directed to the decision of the Hon'ble Supreme Court in the matter of Commissioner of Income Tax vs. Walfort Share and Stock Brokers P. Ltd [2010] 326 ITR 1 (SC) **** that has cited in categorical terms that "there has to be a proximate cause for disallowance which is its relationship with the tax-exempt income." Once the test of "proximate cause" based on the relationship of the expenditure with tax exempt income is established, a disallowance could only then be affected under

> Section 14A – this has however not been done in the case at hand.
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> 19. In this case no expenses were incurred to earn the exempt income. Therefore, no disallowance was warranted under Sec.14A r/w Rule 8D of the Act, as made by the Ld.A.O. and upheld by the Ld. CIT(A) solely on surmises and conjectures – bereft of the recording of any satisfaction to the said effect."

7. The ld. AR further submitted that the AO has not recorded any satisfaction which is mandatory before applying section 14A of the Act. During the year, there was no any expenditure incurred by the assessee. There is only fresh investment of Rs.26.77 crores incurred out of old investments sold and the entire dividend are directly credited to bank account of the assessee and there was no effort done by the assessee for managing/receiving the exempt income. The assessee has sold the entire investments during the year and the capital gains arising has been offered for taxation under the head 'capital gains'. Therefore there was no expenditure incurred by the assessee. He strongly relied in the judgments of different High Courts where it is specifically stated that recording satisfaction before invoking section 14A is mandatory requirement as per law and the AO has missed the bus and there is no satisfaction recorded at all. Therefore the computation made by the AO under Rule 8D(2)(iii) has no legs to stand within the purview of law.

8. On the other hand, the ld. DR relied on the order of lower authorities and submitted that as per section 14A, there is no requirement of recording satisfaction. Once the assessee has received

exempt income, it is mandatory requirement for disallowance u/s. section 14A r.w. Rule 8D(2)(iii). He also relied on the circular issued by the CBDT Circular No.5/2014 [F.No.225/182/2013-ITA.II], dated 11-2-2014. He further submitted that the during the assessment proceedings the AR of the assessee agreed for the disallowance U/s 14A. Some of the administrative expenditures cannot be denied even there is no direct expenditure incurred by the assessee. The section 14A is very much clear regarding disallowance for earning exempt income. Accordingly both the lower authorities were justified.

9. On the rejoinder the ld. AR submitted that during the course of hearing the authorised representative accepted for invoking section 14A but there was no acceptance from the assessee and there is no estoppel in the Income Tax Act for challenging the acceptance made by the authorised representative.

10. Considering the rival submissions, we note that the assessee has investments in mutual funds and shares which leads to earn income which does not form part of total income. We note from computation of income filed by the assessee for the year under consideration that the assessee has received dividend income of Rs.2,77,25,383 which is claimed as exempt and there is no disallowance of expenditures made by the assessee. The AO noted that the assessee should have disallowed direct expenses involved for earning the exempt income i.e., telephone, mobile expenses, audit fee, general expenses etc. The assessee has stated that there is no expenditure involved towards

earning of such exempt income since dividends are directly credited to bank account of the assessee. We note that the opening value of investment is Rs.157.09 crores and fresh investment made during the year is Rs.26.77 crore. The investment sold during the year is Rs.167.09 crores.

11. The ld. AR raised additional ground regarding not recording satisfaction by the AO while invoking the section. 14A of the Act and strongly submitted that without recording satisfaction as per judicial precedents, disallowance u/s. 14A r.w. Rule 8D(2)(iii) is not sustainable. The assessee claimed that there was no any expenditure incurred as per the books of account attributable to earning of exempt income. The provision u/s 14(2) does not empower the AO to apply Rule 8D straightaway without considering the correctness of the assessee's claim in respect of expenditure incurred in relation to the exempt income There is no material on record to suggest that AO has recorded any satisfaction before making disallowance u/s. 14A having regard to the accounts of the assessee. This issue has been decided by the Hon'ble Bombay High Court in the case of Pr.CIT v. Tata Capital Ltd. dated 03.04.2024 reported in [2024] 161taxmann.com 557 (Bombay) wherein it has been held as under:-

> *" 6. In sub-Section (2) of Section 14A and Rule 8D it is provided that if the Assessing Officer is not satisfied with the correctness of the claim in respect of expenditure made by assessee in relation to income which does not form part of the total income under this Act, he shall determine the amount of expenditure in relation to such income in accordance with the provisions prescribed.*

7. Therefore, the most fundamental requirement is the Assessing Officer should record his dis-satisfaction with the correctness of the claim of the assessee in respect of the expenditure and to arrive at such dis-satisfaction he should give cogent reasons.

8. Ms Jain relied upon three judgments of this court, viz., Principal Commissioner of Income Tax v. Bajaj Finance Ltd. [[2019] 110 taxmann.com 303 (Bombay)], Principal Commissioner of Income Tax-2 v. Bombay Stock Exchange Ltd. [[2020] 113 taxmann.com 303 (Bombay)] and Principal Commissioner of Income Tax v. Godrej & Boyce Mfg. Co. Ltd. [2023] 149 taxmann.com 222/292 Taxman 497 (Bombay) to submit that the Assessing Officer must first record a conclusion that having regard to the accounts of the assessee, he is not satisfied with the disallowance offered by the assessee in terms of Section 14A (2) of the Act and it is only on being dissatisfied with the disallowance offered by the assessee, can Rule 8D of the Rules be invoked to compute the disallowance.

9. Paragraph 9 of Bajaj Finance Ltd. (supra) reads as under:

"9. Question No. (ii) pertains to disallowance made by the Assessing Officer under Section 14A of the Act read With Rule SD. The Tribunal, however, deleted the disallowance on the ground that the Assessing Officer had not recorded the necessary satisfaction for not accepting the disallowance offered by the assessee. As is well the amount of expenditure incurred in relation to income which is examined for tax if he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. The satisfaction of the Assessing Officer about the correctness of the expenditure offered for disallowance by the assessee therefore is a pre-condition. In the present case, we have perused the order of assessment in which the Assessing Officer had called assessee to justify the limited disallowances voluntarily offered. The assessee made detailed representation upon the inter alia pointed out that the assessee had not made any expenditure in the nature of administrative expenses. However, to avoid proceedings, a suo motu disallowance was made. The Assessing Officer did not in any manner reject this explanation of the assessee but merely proceeded to make disallowance by invoking Section 14A and applied Rule 8D which the Tribunal correctly reversed."

Paragraph 9 of Bombay Stock Exchange (supra) reads as under:

"9. We note that it is evident from the extracted part of the assessment order referred to hereinabove that the Assessing Officer has come to the conclusion that the disallowance claimed by the Respondent was not consistent with Rule 8D of the said Rules. It is only in view of the disallowances not being worked out as per Rule 8D of the Rules, that the Assessing Officer is not satisfied with the disallowance offered by the Respondent. This, to our mind, is putting the cart before the horse. The Assessing Officer must first record a conclusion that having regard to the accounts of the assessee, he is not satisfied with the disallowance offered by the Respondent in terms of section 14A(2) of the Act. It only on being dissatisfied with the above, does Rule 8D of the Rules can be invoked to compute the disallowance."

Paragraph 11 of Godrej & Boyce Mfg. Co. Ltd. (supra) reads as under:

"11. In the present case, the assessee had earned an exempt income of Rs. 84,30,37,423/- from shares and mutual funds and submitted a computation of inadmissible expenditure u/s 14A amounting to Rs. 13,66,635/- The assessee claimed that the disallowance made u/s14A was as per the books of account attributable to earning of exempt income. On a perusal of the assessment order we find that there is no discussion by the AO with regard income. Further, the AO has not recorded any satisfaction that the working of inadmissible expenditure u/s14A is incorrect with regard to the books of account of the assessee. The provision u/s 14(2) does not empower the AO to apply Rule 8D straightaway without considering the correctness of the assessee's claim in respect of expenditure incurred in relation to the exempt income. We agree with the view of the ITAT that in the present case the AO has neither examined the claim in respect of expenditure incurred in relation to exempt income of the assessee nor has recorded any satisfaction with regard to the correctness of assessee's claim with reference to the books of account. Consequently, the disallowance made by applying the Rule 8D is not only against the statutory mandate but contrary to the legal principles laid down. In our view too, the CIT (A) has rightly deleted the addition made on account of interest expenditure as the assessee had sufficient interest free surplus fund to make the investment and the ITAT has rightly deleted the disallowance made by the AO u/s 14A r.w Rule 8D. Consequently we hold that, the interest expenditure cannot be disallowed u/s 14A r.w. Rule 8D(2) (ii) under any circumstances."

10. Now let us examine the assessment order to see whether this mandatory conclusion that the Assessing Officer is not satisfied with the disallowance made by the assessee, has been arrived at. The only place where the Assessing Officer has come to his findings is at paragraph 5.2 of the assessment order, which reads as under:

5.2. The said submission has been considered. In the assessment order passed u/s 143(3) dated 20.10.2010, the AO has worked out the disallowance u/s 14A as per Rule 8D at Rs.29,66,81,836/-. The assessee has also furnished working u/Rule 8D (though under protest) which amounts to Rs.44,03,33,135/-. Rule 8D is to be applied in the present case based on the various discussions and findings of the AO in the original assessment order passed. However, since the amount worked out by the assessee is higher, the same has been considered for disallowance.

11. The Assessing Officer has not expressed his satisfaction in the way it should have been. The Assessing Officer does not say he is not satisfied and why he was not satisfied. There are no reasons given.

Moreover, Ms Jain submitted that the Assessing Officer, in paragraph 5.2 of the impugned order quoted above, has relied upon some discussions and findings of some original assessment order passed, but the first assessment order ever to have been passed is the impugned order dated 28th March 2013 where the Assessing Officer has reduced the disallowance. Therefore, it only indicates clear non application of mind by the Assessing Officer. This was not controverted. We would agree with the submissions of Ms Jain since CIT(A) in his order dated 9th December 2014 records "Though not mentioned in assessment order, admittedly a notice u/s 143(2) was issued and assessment proceedings were pending on the date of search which came to be abated. In response to notice u/s 153A dated 24.10.2011 appellant filed return of income on 29.1.2011 declaring Total income of Rs.317,47,69,697/- and Book Profit u/s115JB Rs.666,76,27,404/- In the assessment order dated 28.3.2013 passed u/s 153A r.w.s. 143(3), the Assessing Officer has made certain additions / disallowance which are subject matter of this appeal". The assessment order dated 28th March 2013 is the order that was impugned before the CIT(A). Therefore it clearly indicates that the Assessing Officer's finding in paragraph 5.2 of the assessment order is based relying upon a non existent assessment order and that indicates clear non application of mind."

8. The order of the ITAT (Panaji Bench) in the case of Sesa Goa Ltd. (supra) has been upheld by the Goa Bench of this Court in CIT v. Sesa Goa Ltd. [2021] 127 taxmann.com 354/436 ITR 17 (Bom.) where the Division Bench concurred with the view taken by the ITAT that the Assessing Officer did not record his satisfaction why the disallowance made by Assessee was incorrect."

12. Further in the case of Pr. CIT v. Hindustan Aeronautics Ltd. reported in [2022] 143taxmann.com357 (Karnataka), the jurisdictional High Court has held as under:-

"6. In Para 17.2 of its order, ITAT has placed reliance on ITA No. 404/2016 while allowing assessee's appeal. The solitary contention urged by Shri Sanmathi that the facts of the instant case are different and it is based on the findings recorded in Para 2.5 of the Assessing Officer's order. We have carefully considered the same. The Assessing Officer has recorded that accounts had revealed that there were certain heads of expenditure which could have been incurred towards the management. Thus, the Assessing Officer has made his own assessment and not recorded the satisfaction based on the record. In that view of the matter, the solitary ground urged by Shri Sanmathi is untenable. The Tribunal has rightly followed the decision of this Court in ITA No. 404/2016. Hence, this question of law raised by the Revenue is answered in favour of the Assessee. Resultantly, this appeal does not merit any consideration."

13. A similar issue has been decided after relying on various judgements by the coordinate bench of the ITAT Raipur Bench in the case SRS Industries (P) Ltd. vs Income Tax Officer in ITA No. 126/RPR/2024 for the AY 2017-18 order dated 22.05.2024 reported in [2024] 163 taxmann.com 480 (Raipur- Trib.) in which it has been held as under :-

10. I have thoughtfully considered the aforesaid contention of the Ld. AR and principally concurred with him that in case if the assessee has sufficient self-own funds, the presumption would be that the investment in the exempt income yielding investment was sourced out of the same. My aforesaid conviction is fortified by the judgment of the Hon'ble High Court of Bombay in the case of *CIT* v. *HDFC Bank Ltd.* . The Hon'ble High court had observed that where the assessee has more interest free funds than the tax-free investments, then a presumption would arise that tax free investments would be out of the interest-free funds. In fact, the aforesaid view is further supported by the judgment of the Hon'ble Supreme Court in the case of *South Indian Bank Ltd.* v. *CIT* , wherein the Hon'ble Apex Court had held that if investment in exempt income yielding shares is made out of common funds and the assessee had available non-interest bearing funds larger than the investments made in tax-free securities then in such cases, no disallowance u/s. 14A would be called for. Although, I am principally in agreement with the aforesaid contention of the Ld. AR but the said factual position, in all fairness, would be required to be verified. Accordingly, I restore the matter to the file of the A.O with a direction to verify the aforesaid factual position. In case, if the aforesaid claim of the assessee as regards the availability of the sufficient self-owned funds is found to be in order, then, no disallowance of any part of the interest expenditure u/s. 14A r.w.r. 8D would be warranted in its case. Accordingly, this part of the ground is allowed for statistical purposes to the extent relevant in terms of my aforesaid observations.

11. Apropos the disallowance of administrative/other expenses u/s. 14A r.w.r. 8D(2)(*ii*), I finds substance in the claim of the Ld. AR that as the A.O had failed to record his dissatisfaction as regards the assessee's claim that no part of such expenditure claimed as deduction in the profit and loss account was attributable towards earning of the exempt income, therefore, he could not have mechanically worked out the disallowance to the said extent.

12. On a careful perusal of the assessment order, I find substance in the claim of the Ld. AR that the A.O had without dislodging the assessee's claim that no part of the administrative/other expenditure claimed as deduction in the profit and loss account was attributable to earning of the exempt income, and had mechanically worked out the disallowance u/s.14A of the Act as per the methodology contemplated under Rule 8D of the Income Tax Rules, 1962. Also, the CIT(Appeals), without correcting the aforesaid lapse of the A.O had merely approved his order. I find that a similar issue had been dealt with and adjudicated by the ITAT, Panaji Bench in the case of *Infrastructure Logistics (P.) Ltd.* (*supra*) wherein it was held that where the A.O made disallowance u/s. 14A r.w.r.8D, but had failed to record his dissatisfaction as regards the claim of the assessee that

no part of expenditure claimed as deduction could be attributed towards earning of the exempt income, he had wrongly assumed jurisdiction u/s. 14A as a result whereof disallowance determined by him by triggering the mechanism contemplated in Rule 8D(2)(*iii*) could not be sustained and was liable to be vacated. For the sake of clarity, the relevant observations of the Tribunal are culled out as under:

> "13. After giving a thoughtful consideration to the issue in hand in the backdrop of the aforesaid contentions advanced by the Ld. Authorized Representatives of both the parties, we find substantial force in the claim of the Ld. AR. Admittedly, pursuant to the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd.* v. *CIT, New Delhi* (2018) , the A.O prior to dislodging the disallowance, if any, offered by the assessee u/s.14A of the Act remains under a statutory obligation to record his dissatisfaction as regards the correctness of the said claim of the assessee in reference to its accounts and therein, categorically record the reasons as to why the claim of the assessee qua the disallowance so offered by him is not being accepted. On a similar footing would be a case where the assessee had not attributed any part of the expenditure for earning of exempt dividend income and, the A.O is not satisfied with the said claim. Apart from that we find that the Hon'ble Jurisdictional High Court in the case of CIT v. Sociedade De Fomento Industrial (P). Ltd (*supra*) had observed, that the A.O before rejecting the disallowance offered by the assessee remains under a statutory obligation to give a clear finding with reference to the accounts of the assessee that the other expenditure which were being claimed qua the non-exempt income were in fact related to its exempt income. Also, as stated by the Ld. AR, and rightly so, a similar view had been taken by the Hon'ble High Court of Delhi in the case of *H.T Media Ltd*. v. *Pr. CIT* . Now, in the case before us, we find that the A.O had though deliberated at length on the scheme of section 14A of the Act, but had failed to give any reason as to why the claim of the assessee that no part of the expenditure could be attributed towards earning of exempt income was not to be accepted. Although, the CIT(Appeals) in his order had tried to improve upon the aforesaid lapse of the A.O, but a perusal of his observations too do not inspire much of confidence, as the statutory obligation requiring recording of a clear finding with reference to the assessee's accounts that the expenditure claimed by the assessee to have been incurred in respect of its non-exempt income was in fact related to its exempt income, is not found to be satisfied. Although the CIT(Appeals) had referred to the assessee's claim for deduction of certain expenses, but the same are more or less in the nature of general observations which would not

> suffice the satisfaction of the obligation that is cast upon the revenue for dislodging the claim of the assessee qua attribution of any part of the expenditure for earning of exempt dividend income. Be that as it may, we, in terms of our aforesaid observations, concur with the claim of the Ld. AR that as the A.O had failed to record his dissatisfaction as regards the claim of the assessee that no part of the expenditure claimed as deduction could be attributed towards earning of exempt dividend income, therefore, he had wrongly assumed jurisdiction u/s.14A of the Act, as a result whereof the disallowance of Rs. 15,03,242/-determined by him by triggering the mechanism contemplated in Rule 8D(2)(*iii*) cannot be sustained and is liable to be vacated. As we have vacated the disallowance made by the A.O u/s.14A(2)(*iii*) for want of valid jurisdiction on his part, therefore, we refrain from adverting to the other contentions that have been advanced by the Ld. AR qua sustainability of the said disallowance on merits which are left open. Thus, the Ground of appeal No.2 raised by the assessee is allowed in terms of our aforesaid observations.

13. Also, I find that the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd.* v. *CIT* has held that that if the A.O was not satisfied with the disallowance that was offered by the assessee, then, he remained under a statutory obligation to record his dissatisfaction to the said effect, as it was only thereafter that he could assume jurisdiction and take recourse to and work out the disallowance as per sub- section (2) and (3) of Sec. 14A of the Act.

14. I further find that the Hon'ble Supreme Court in the case of *Godrej & Boyce Manufacturing Company Ltd.* v. *Dy. CIT* [2017] 81 taxmann.com 11/247 Taxman 361/394 ITR 449/[(Civil Appeal No. 7020 of 2011, dated 8-5-2017], dealing with the statutory requirement of satisfaction on the part of the A.O as regards not accepting the correctness of the claim of the assessee in respect of the expenses claimed by him to have been incurred in relation to income which does not form part of the total income of the assessee, had held as under:-

> "Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the

> assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

I am of the view that in the backdrop of the aforesaid judgment of the Hon'ble Supreme Court in the case of *Godrej & Boyce Manufacturing Company Ltd.* (*supra*), the issue as regards requirement of a satisfaction of the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee, is obligatory and cannot be dispensed with by the A.O, thus stands settled and is no more res integra. I, thus, in the backdrop of the aforesaid judgment of the Hon'ble Apex Court am of the considered view that now when the assessee company in the present case had claimed that no part of the administrative/other expenses claimed by it as a deduction were incurred in relation to the income which did not form part of its total income, then the A.O only after being satisfied that having regard to the accounts of the assessee, as placed before him, it was not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee, thus, only after rejecting the said claim of the assessee, after complying with the aforesaid statutory obligation as stood cast upon him, could have validly proceeded with and determined the amount of such other/administrative expenditure incurred in relation to the income which did not form part of its total income. I however find that in the case of the present assessee company the A.O had carried out the disallowance of the other/administrative expenditure under Sec.14A in a mechanical manner as per the methodology provided in Rule 8D(2)(*ii*). I am of the considered view that the general observations of the A.O can by no means partake the color and character as that of a satisfaction, which as per the mandate of law is required to be arrived at by him with regard to the correctness of the claim of the assessee in respect of the administrative/other expenses claimed to have been incurred in respect of income which did not form part of the total income of the assessee company, having regard to the accounts of the assessee, as were placed before him. I, thus, being of the considered view that as the A.O had summarily carried out the disallowance of the administrative/other expenses under Sec. 14A, as per the methodology provided in Rule 8D(2)(*ii*), without satisfying the statutory requirement of first arriving at a satisfaction as required by the mandate of law, having regard to the accounts of the assessee as placed before him, therefore, am unable to persuade myself to uphold the disallowance of Rs.2,22,963/- which had been sustained by the CIT(A). The order of the CIT(A) sustaining the disallowance of Rs.2,22,963/- under Sec. 14A is thus set

aside. Accordingly, this part of the ground is allowed to the extent relevant in terms of my aforesaid observations.

14. During the course of hearing, the ld. AR also relied on the judgment of Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Co. (P.) Ltd. reported in (2017) 151 DTR (SC) 89 in which it is held that without assigning any specific reasons and without establishing nexus between expenditure disallowed and dividend income allowed, disallowance u/s. 14A r.w. Rule 8D(2) cannot be made. The ld. AR has also relied on other judgements noted above in the written submissions.

15. Respectfully following the above judgments, we delete the disallowance made by the AO u/s. 14A r.w. Rule 8D(2) without recording any satisfaction. The additional ground raised by the assessee which is a legal ground is allowed. Being so, the other grounds raised by the assessee on merits are left open.

16. In the result, both the assessee's appeals for AY 2014-15 & 2018-19 are allowed on this issue.

ITA 1208/Bang/2024 (Revenue's appeal)

17. The AO noted that the assessee has made transactions with its sister concern and has made payment towards back office charges (legal & professional charges) of Rs.4,41,25,131 to Manipal Education & Medical Group International Pvt. Ltd. [MEMGIPL] which is the holding company of the assessee. In this regard the assessee explained that assessee has entered into services agreement with MEMGIPL

which states that MEMGIP would be rendering some services like giving fund management and financial services, tax advisory services, management and advisory services, secretarial & legal services, project feasibility & implementation, brand royalty, brand royalty-JVs, marketing, PR, etc. and in lieu of these services, assessee has to pay 0.5% of the total turnover upto AY 2020. Accordingly the assessee has paid the amount of Rs.4,41,25,131after making due computations. The AO noted that the assessee has a separate and sound set up of legal, audit and financial works/requirements and is duly incurring and debiting huge cots under these heads. There are also charges paid under legal & professional charges, salaries, etc. Therefore assessee has been separately incurring or is eligible to claim cost when incurred or services that are supposedly rendered by the holding company as per agreement. Regarding project feasibility and implementation, the AO noted that as and when assessee incurs such expenditure it can always claim amortisation u/s. 35D instead of paying to MEMGIPL as a recurring payment every year. Coming to services provided of financial consultancy and help to the assessee in getting loans these are miniscule services. Other services provided by the holding company were also analysed and AO found that the expenditure is excessive. Therefore the AO disallowed 50% of the total expenditure u/s. 40A(2) of the Act and made addition of Rs.2,20,62,566.

18. On appeal, the ld. FAA allowed this ground of the assessee following the decision of the coordinate bench of Tribunal for the assessment year 2009-10 & 2010-11 and jurisdictional High Court

decision in assessee's sister concern case namely Manipal Health Systems Private Limited for the AY 2011-12. Aggrieved, the revenue is in appeal before the ITAT.

19. The ld. DR relied on the order of the AO.

20. Considering the rival submissions, we note that the AO has disallowed 50% of back office charges paid to holding company, MEMGIPL, u/s. 40A(2) of the Act. This issue has been decided in assessee's favour in assessee's own case in ITA Nos.1557 & 1558/Bang/2016 & ITA No.1076/Bang/2076 for AYs 2011-12 to 2013-14 respectively. Further the similar issue is also decided in favour of assessee in the case of assessee's sister concern in ITA Nos.1667 & 1668/Bang/2016 for AYs 2009-10 & 2010-11. We also note from the order of the ld. FAA that he has relied on the judgment of jurisdictional High Court in the case of assessee's sister concern (Manipal Health Systems P.Ltd.) in ITA No.823/2018 dated 13.10.2019 r.w. ITA No.817/2018 dated 12.10.2018 wherein the decision of ITAT Bangalore in ITA No.1667/Bang/2016 has been confirmed. The same issue has also been decided by the coordinate Bench in favour of assessee in the case of Manipal Hospitals (Dwarka) Pvt. Ltd. in ITA No.1075/Bang/2023 dated 31.1.2024.

21. Respectfully following the above decisions, we do not find any infirmity in the order of the ld. FAA.

22. In the result, the the revenue's appeal is dismissed.

23. To sum up, the appeals of the assessee for AYs 2014-15 & 2018-19 are allowed, and the revenue's appeal for AY 2014-15 is dismissed.

Pronounced in the open court on this 24th day of October, 2024.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(LAXMI PRASAD SAHU)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th October, 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.