IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER

ITA.NO. 6787/MUM/2019 (A.Y: 2016-17)

ACIT - Circle-3(3)(2) Room No. 628, 6th Floor Aayakar Bhavan, M.K. Road Mumbai 400 020	*v.*	M/s. Synergy Appliances Pvt. Ltd. 171, C-Wing, Mittal Court Nariman Point, Mumbai - 400021 **PAN: AAACR1840E**
(Appellant)		**(Respondent)**

Assessee by	**:**	**None**
Department by	**:**	**Shri Vijaykumar Menon**
Date of Hearing	**:**	**15.03.2021**
Date of Pronouncement	**:**	**15.03.2021**

O R D E R

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against order of the Ld. Commissioner of Income-tax (Appeals)-8, Mumbai [hereinafter for short "Ld. CIT(A)] dated 22.08.2019 for the A.Y. 2016-17 in deleting the disallowance u/s. 14A of the Act made by the Assessing Officer.

2. Briefly stated the facts are, the Assessing Officer while completing the assessment computed the disallowance of ₹.3,99,55,605/- u/s. 14A r.w. Rule 8D of I.T. Rules. Since assessee made suo-moto disallowance of ₹.1,76,430/-, Assessing Officer restricted the disallowance to ₹.3,97,79,175/-. On appeal Ld.CIT(A) deleted the disallowance as no exempt income has been earned by the assessee during the year. Against this order revenue is in appeal before us.

3. Inspite of issue of notice, none appeared on behalf of assessee nor any adjournment was sought. Therefore, we proceed to dispose off this appeal on hearing the Ld.DR. Ld.DR vehemently supported the orders of the Assessing Officer.

4. Heard Ld. DR and perused the orders of the Authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd [91 Taxmann.com 154] deleted the disallowance as no exempt income has been earned by the assessee during the year. While holding so, the Ld.CIT(A) observed as under: -

> *"3.1.4 The main thrust of the appellant is that the appellant company has not earned any exempt income during the year under consideration. Recently, Hon'ble Supreme Court of India has given a landmark judgement on the section 14A in the case of Maxopp*

Investment Ltd 91 Taxmann.com 154. The judgement is particularly relevant on the issues of strategic investment and stock in trade, while applying the provisions of section 14A. It is held that If expenditure is incurred on earning dividend income, that much of expenditure which is attributable to dividend income has to be disallowed and cannot be treated as business expenditure. In those cases, where shares are held as stock-in-trade, main purpose is to trade in those shares and earn profits therefrom, in the process, certain dividend is also earned, though incidentally, which is also an income. This triggers applicability of section 14A which is based on theory of apportionment of expenditure between taxable and non-taxable income. Therefore, to that extent, expenditure incurred in acquiring those shares will have to be apportioned. In the same order, Hon'ble Supreme Court has held that the disallowance u/s 14A cannot exceed the exempt income: I find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has noted in para 40 of said order as under:

> *"We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable.*
>
> *In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT."*

3.1.4. In view of the above detailed discussion of Hon'ble SC order in Maxopp Investments Ltd, it is held here that it is not a fit case for invoking provisions of section 14A as no exempt income has been earned by the appellant at all. It is worthwhile to mention over here that in a recent judgement dated 2/7/18 in the case of Chettinad Logistics Pvt Ltd, (95 Taxmann.com 250), the Hon'ble Apex Court re-affirmed its stand when it dismissed the SLP against Ld Madras High Court ruling that Section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year.

3.1.5 In view of this established judicial position, the AO is directed to restrict the disallowance to the amount of suo-moto disallowance of Rs 1,76,430/-. Any disallowance over and above this disallowance is hereby deleted. This ground is therefore allowed."

5. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein and in view of the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra), we do not find any infirmity in the order passed by the Ld.CIT(A) in deleting the disallowance u/s.14A of the Act as no exempt income has been earned by the assessee during the year under appeal.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the virtual court on 15.03.2021.

Sd/-	Sd/-
(M. BALAGANESH)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 15/03/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum