

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.318 OF 2016

BETWEEN:

M/S. KODAGU DISTRICT CO-OPERATIVE
CENTRAL BANK LTD,
REP. BY SRI. SHIVA KUMARA SWAMY
CHIEF EXECUTIVE OFFICER
GENERAL THIMMAYYA CIRCLE
MADIKERI-571201.

.... APPELLANT

(BY MR. V. CHANDRASEKHAR, ADV., WITH
MR. S. ANNAMALAI, ADV., FOR
MR. M. LAVA, ADV.,)

AND:

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, AAYAKAR BHAVAN
BELUR ROAD, VIJAYANAGAR
HASSAN-573201.

... RESPONDENT

(BY MR. JEEVAN J. NEERALGI, ADV.,)

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THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX
ACT 1961, ARISING OUT OF ORDER DATED 30.12.2015 PASSED
IN ITA NO.1047/BANG/2013 FOR THE ASSESSMENT YEAR 2009-
10, PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE
APPELLANT.

(ii) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS THEREIN TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL IN ITA NO.1047/BANG/2013 DATED 30.12.2015 REFERRED TO AS ANNEXURE-A RELATING TO ASSESSMENT YEAR 2009-10.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the assessee. The subject matter of the appeal pertains to the Assessment Year 2009-2010. The appeal was admitted by a Bench of this Court vide order dated 09.11.2016 on the following substantial questions of law:

"1. Whether the Tribunal is justified in law in confirming the addition of Rs.24,95,846/- made under section 14A read with Rule 8D by holding that the Appellant has not made any claim that it has not incurred any expenditure for earning the exempt income which is contrary to material on record and consequently perverse on the facts and circumstance of the case?

2. Whether the Tribunal erred in law in not holding that the assessing officer has not arrived at the mandatory satisfaction as required under section 14A and hence no

disallowance is possible on the facts and circumstances of the case?"

2. Facts leading to filing of this appeal briefly stated are that the assessee is a District Central Co-operative Bank and is engaged in the banking business. The assessee filed return of income for the Assessment Year 2009-10 on 29.09.2009 declaring an income of Rs.3,80,29,000/-. The case of the assessee was selected for scrutiny and the Assessing Officer completed the assessment by an order dated 30.12.2011 and made addition of a sum of Rs.2,38,30,775/- which included a sum of Rs.24,95,846/- disallowed under Section 14A of the Act. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 27.02.2013 affirmed the order passed by the Assessing Officer. Thereafter, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The Tribunal sustained disallowance of Rs.24,95,846/- made under Section 14A of the Act. However, the appeal preferred by the assessee was partly

allowed. In the aforesaid factual background, the assessee has filed this appeal.

3. Learned counsel for the assessee submits that Section 14A of the Act mandates the Assessing Officer to first reject the claim of the assessee regarding the extent of such expenditure and rejection must be disclosed by assigning cogent reasons. It is only after rejection of cogent reasons, the question of determination of expenditure by the Assessing Officer would arise. It is further submitted that in the instant case, the aforesaid mandatory requirement has not been fulfilled by the Assessing Officer. However, the aforesaid aspect of the matter is neither been appreciated by the Commissioner of Income Tax (Appeals) nor the Tribunal. In support of aforesaid submission, reliance has been placed on the decision of the Supreme Court in '**MAXOPP INVESTMENT LTD. Vs. COMMISSIONER OF INCOME-TAX**', [2012] 347 ITR 272 (DELHI), which has been upheld by the Supreme Court in the decision reported in '**MAXOPP INVESTMENT LTD. Vs. CIT**', (2018) 402 ITR 640. On the other hand, learned counsel for the revenue

has invited our attention to Paragraphs 10 and 11 of the order passed by the Tribunal and has submitted that all the authorities under the Act have rightly disallowed the claim for deduction under Section 14A of the Act and no interference in this appeal is called for.

4. We have considered the submissions made by the learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of the relevant extract of Section 14A of the Act, which reads as under:

"14A (1)xxxxx

(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."

Thus, from perusal of the aforesaid provision, it is axiomatic that if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with regard to 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 of the assessee, then the Assessing Officer may either re-assess the income under Section 147 of the Act or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under Section 154 of the Act for any Assessment Year.

5. In the instant case, the Assessing Officer in Paragraph 5 of the order has dealt with the claim of the assessee with regard to disallowance under Section 14A of

the Act. Paragraph 5 of the Act is reproduced below for reference:

"5. Disallowance U/s 14A: The assessee claimed that Income received from Mutual Fund is totally exempt from Income Tax U/s 10(23D)(i) & (ii) of the Income Tax Act, 1961. These mutual funds are registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder. Further any income from such other Mutual fund set up by the Public Sector Bank or a Public Financial Institution or authorized by the Reserve Bank of India and subject to such conditions as the Central Government may, by Notification in the Official Gazette, specify in this behalf are exempted from Income tax. Rule 8D is not applicable in this case and the entire income from mutual fund be allowed under Sec.10(23D)(i) & (ii) of the Income Tax Act, 1961.

I have considered the claim of the assessee. Under Rule 8D of the Income Tax Rules, with effect from asst. year 2008-09 there is a provision for disallowance to the extent of one-half per cent of the average of the value of Investment, income which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year. The assets represent Bond Fund/Income Fund, State Govt. Undertaking Bonds and Shares in Co-operative Institutions and the average is worked out as under:

<i>Opening Balance</i>	<i>Rs.47,40,36,800</i>
<i>Closing Balance</i>	<i><u>Rs.52,43,01,677</u></i>
	<i><u>Rs.99,83,38,477</u></i>

Rs.99,83,38,477 divided by 2 = 49,91,69,239 x 0.5% = Rs.24,95,846/-.

Accordingly, a sum of Rs.24,95,846/- is disallowed and added to the total income admitted by the assessee and brought to tax."

Thus, from perusal of the order passed by the Assessing Officer, it is evident that the Assessing Officer has not determined the amounts of the expenditure and has not recorded any reasons with regard to correctness of the claim made by the assessee in respect of such expenditure, in relation to the income which does not form part of the total income of the assessee. The Assessing Officer before embarking upon determination of the amount of expenditure incurred in the light of the exempted income, has to record a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. The aforesaid mandatory requirement has not been fulfilled by the Assessing Officer before disallowing the assessee under Section 14A of the Act.

6. In view of the preceding analysis, the substantial questions of law framed by this Court is answered in favour of the assessee and against the revenue.

7. In the result, the order passed by the Assessing Officer dated 30.12.2011, order passed by the Commissioner of Income Tax (Appeals) dated 27.02.2013 and the order passed by the Tribunal dated 30.12.2015, insofar as it pertains to disallowance of the claim of the assessee under Section 14A of the Act, are hereby quashed.

In the result, the appeal is ***allowed***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RV/GH