

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1434/Bang/2018
(Assessment Year: 2010-11)

Dy. Commissioner of Income Tax,
Circle 7(1)(1), Bangalore.

....Appellant

Vs.

M/s. United Breweries Limited,
(Successor to M/s. United Millennium Breweries Ltd.)
Bantupalli Village, Ranasthalam Mandal,
Srikakulam District.
Andhra Pradesh.
PAN AABCG 4480G

.....Respondent.

Assessee By:	Shri B.K. Panda,CIT (D.R)
Revenue By:	Shri K.R. Vasudevan, Advocate.

Date of Hearing :	16.12.2020.
Date of Pronouncement :	17.12.2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

This appeal filed by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam Dt.14.02.2018 for the Assessment Year 2010-11.

2. The Revenue has raised the following grounds :

1. " The order of the Learned CIT(A) is opposed to Law and facts of the case.
2. "Whether the CIT(A) is justified in holding that the disallowance made by the AO is not warranted, ignoring the fact that the interest bearing funds were utilised for making investment in Preference shares of subsidiary companies, the income from which does not form part of total income of the assessee and therefore is clearly diversion of funds?"
3. "Whether the CIT(A) is justified in law in ignoring the ratio of the decision of the Hon'ble Delhi High Court in the case of MAXOPP INVESTMENT LIMITED Vs CIT [15 Taxmann 390] wherein it is held that disallowance of interest u/s. 14A is justified even though the assessee has invested in the subsidiary company "for the sake of managerial control" which is akin to "investment for bailing out" the subsidiary company"?
4. "Whether the CIT(A) is justified in law in deleting the addition made on account of Bank Guarantee Commission paid to M/s. Millenium, Breweries Ltd., for obtaining loan from Axis Bank?"
5. "Whether the CIT(A) is justified in directing the AO to delete the addition made towards bank guarantee commission"?
6. "Whether the CIT(A) is justified in law in holding that the investment in subsidiary company was made of commercial expediency, when the assessee has failed to prove as to how his business would be affected adversely if the amount of Rs. 35 Crs. would not have been advanced"?
7. For this and other grounds that may be urged at the time of hearing, it is prayed that the order of CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
8. The appellant craves leave to add, alter, amend and / or delete any of the grounds of mentioned above."

3. The contention of the ld. DR is that the CIT (Appeals) blindly followed the earlier order of the Tribunal in ITA Nos.512, 513, 514/Viz/2014 Dt.21.04.2017 without considering the facts of the present case on hand in proper perspective and decided in favour of the assessee which is improper. According to him, the CIT (Appeals) ought to have considered the latest Hon'ble Supreme Court judgment in the case of Maxopp Investment Ltd. Vs. CIT 402 ITR 640 (SC). On the other hand,

the learned Authorised Representative submitted that the same loan which was availed in earlier year was outstanding in this assessment year also and the facts of the present assessment year is same as in earlier assessment years 2007-08 to 2009-10 and the order in ITA Nos. 512, 513, 514/Viz/2014 Dt.21.04.2017 has reached finality since the Department has not filed any appeal against the Tribunal order and it should be followed. There is no question of taking a different view in this assessment year since the facts are similar.

4. We have heard both the parties and perused the material on record. We have carefully gone through the orders of the authorities below. The Assessing Officer invoked the provisions of Section 14A without elaborating anything on exempted income. Further the Tribunal in the earlier year in assessee's own case the issue in the absence of Hon'ble Supreme Court judgment in the case of Maxopp Investment Ltd. (supra). This judgement of Maxopp Investment Ltd. (supra) was delivered by Hon'ble Supreme Court on 12.02.2018. On the other hand, the order of the Tribunal for earlier assessment years 2007-08 to 2009-10 was pronounced on 21.4.2017. Hence, the Tribunal while adjudicating the issue in earlier assessment years has no occasion to consider the judgement of Hon'ble Supreme Court in the case of Maxopp Investment Limited (supra) wherein it was held that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of

the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. Dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. 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 at 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. Being so, it is

appropriate to remit the issue to the file of CIT (Appeals) to decide the issue in the light of the above judgment. The issue raised by the Revenue in this appeal remitted back to the file of CIT (Appeals) for fresh consideration.

5. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(N.V. VASUDEVAN)
VICE PRESIDENT**

Sd/-

**(CHANDRA POOJARI)
ACCOUNTANT MEMBER**

Dated: 17.12.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore