

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

I.T.A. No.6610/M/2011 (Assessment Year: 2008-2009)

Edelweiss Finance & Investments Ltd, (Formerly Known as Cross Border Investments P Ltd), 14 th Floor, Express Towers, Nariman Point, Mumbai-21.	बनाम/ Vs.	Addl. CIT, Range 3(1), Mumbai.
स्थायी लेखा सं./PAN :AAACC2233N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.7658/M/2011 (Assessment Year: 2008-2009)

DCIT, Circle 3(1), R.No.607, 6 th Floor, Aayakar Bhavan, Mumbai – 400 020.	बनाम/ Vs.	M/s. Cross Border Investments P. Ltd., (Now Known as Edelweiss Finance & Investments Ltd), Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 98.
स्थायी लेखा सं./PAN :AAACC2233N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.1791/M/2013 (Assessment Year: 2009-2010)

DCIT, Circle 3(1), R.No.607, 6 th Floor, Aayakar Bhavan, Mumbai – 400 020.	बनाम/ Vs.	M/s. Edelweiss Finance & Investment Limited, Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 400098.
स्थायी लेखा सं./PAN :AAACC2233N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.4328/M/2014 (Assessment Year: 2010-2011)

Edelweiss Finance & Investments Ltd, (Formerly Known as Cross Border Investments P Ltd), Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 400098.	बनाम/ Vs.	DCIT, Circle 3(1), Mumbai – 400 020
स्थायी लेखा सं./PAN :AAACC2233N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.4651/M/2014 (Assessment Year: 2010-2011)

DCIT, Circle 3(1), Mumbai – 400 020	बनाम/ Vs.	Edelweiss Finance & Investments Ltd, (Formerly Known as Cross Border Investments P Ltd), Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 400098.
स्थायी लेखा सं./PAN :AAACC2233N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.6611/M/2011 (Assessment Year: 2008-2009)

Edelweiss Commodities Ltd., (Formerly Knows as EACL Advisors Ltd), 14 th Floor, Express Towers, Nariman Point, Mumbai-21.	बनाम/ Vs.	Addl.CIT, Range 3(1), Aayakar Bhavan, M.K. Road, Mumbai-20.
स्थायी लेखा सं./PAN : AABCE3819M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.7662/M/2011 (Assessment Year: 2008-2009)

DCIT, Circle 3(1), R.No.607, 6 th Floor, Aayakar Bhavan, Mumbai – 400 020.	बनाम/ Vs.	Edelweiss Commodities Ltd., (Formerly Knows as EACL Advisors Ltd), Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 98.
स्थायी लेखा सं./PAN :AABCE3819M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.1793/M/2013 (Assessment Year: 2009-2010)

DCIT, Circle 3(1), R.No.607, 6 th Floor, Aayakar Bhavan, Mumbai – 400 020.	बनाम/ Vs.	Edelweiss Commodities Ltd., (Presently Edelweiss Trading & Holding Ltd), Edelweiss House, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai – 98.
स्थायी लेखा सं./PAN :AABCE3819M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri Aravind Sonde
प्रत्यर्थी की ओर से/ Revenue by :	Shri Anand Mohan, CIT-DR

सुनवाई की तारीख / Date of Hearing : 17.11.2016

घोषणा की तारीख / Date of Pronouncement : 16.12.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

There are 8 appeals under consideration. All these appeals are filed by the assessees involving the assessment years 2008-2009; 2009-10 and 2010-2011. Since, the issues raised in these appeals are inter-connected / identical, therefore, for the sake of convenience, they are clubbed, heard combinedly and disposed off in this consolidated order. Appeal wise adjudication is given in the following paras of this order.

I. Cross Appeals for the AY 2008-2009 (In the case of Edelweiss Finance & Investment Ltd)

ITA No.6610/M/2011 (By assessee)
ITA No.7658/M/2011 (By Revenue)

2. These two cross appeals are filed against the order of the CIT (A)-7, Mumbai dated 7.7.2010.
3. In the appeal of the assessee (**ITA No.6610/M/2011**), the solitary issue relating to the disallowance u/s 14A read with Rule 8D(2)(iii) of the Income Tax Rules 1962 (the Rules).
4. Before us, at the outset, Ld Counsel for the assessee submitted that the CIT (A) erred in applying the provisions of clause (iii) of Rule 8D(2) of the Rules on the entire average investment of the assessee without realising the fact that the same should be applied only on the dividend yielding investment of the assessee. Ld AR also submitted that the AO should have restricted the disallowance to some percentage of the exempt income and not to the 0.5% of the average income.
5. After hearing both the parties, we find, the appeal under consideration relates to the AY 2008-09 and therefore, the applicability of the Rule 8D of the Rule is

undisputed. However, it is a settled legal proposition at our level that the average investment desires exclusion of the non-dividend yielding investments in view of the decisions in the cases of (i) ACB India Limited vs. DCIT in ITA No. 615/2014 (Del. HC); (ii) M/s. Edelwiess Securities Limited vs. DCIT [ITA No. 7235/M/2011]; (iii) Coal India Limited [ITA No. 1032/Kol/2012]. Therefore, in our opinion, the assessee is entitled to relief on this argument. Accordingly, the relevant grounds raised by the assessee are required to be allowed in principle. We order accordingly and direct the AO to re-calculate the disallowance under Rule 8D(2)(iii) of the Rules. Thus, grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

7. In the cross appeal (**ITA No.7658/M/2011**), the Revenue raised various issues. The **first issue** raised in this appeal relates to the disallowance u/s 8D(2)(ii) of the Rules. Bringing our attention to the chart filed in this regard, Ld Counsel for the assessee submitted that the CIT (A) granted relief on the issue of applicability of clause (ii) of Rule 8D(2) relating to interest disallowance. In this regard, CIT (A) held that the case is covered by the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs Reliance Utilities & Power Limited (313 ITR 340) (Bom). Further, CIT (A) also relied on another judgment of the Bombay High Court in the case of HDFC Bank Limited vs. DCIT (383 ITR 529) (Bom) and mentioned that the assessee is having excess interest free funds in such case, no disallowance is called for under clause (ii) of Rule 8D(2) of the Rules. We agree with the said decision of the CIT (A) on this issue and therefore, the conclusions drawn by the CIT (A) are upheld. Further, Ld Counsel for the assessee submitted that for computing the average investment, the investment in stock-in-trade should be excluded for the purpose of quantifying the disallowance which are required to be made under clauses (ii) and (iii) of Rule 8D(2) of the Rules. In this regard, Ld Counsel for the assessee relied on the judgment of the CIT vs. India Advantage Securities Ltd [380 ITR 471 (Bom)]. After hearing both the parties, we find, the order of the CIT (A) on this issue is fair and reasonable and it does not call for any interference. Thus, Grounds no.1 & 2 raised by the Revenue are dismissed.

8. The second issue (Ground no.3) raised by the Revenue relates to the allowability of the provision of mark-to-market loss. AO disallowed the loss for the

reason that the loss on the last date of the financial year was in the nature of non-crystallised loss and was in nature of contingent liability. On this issue, after considering the submissions of the assessee, vide para 10.1 of his order, CIT (A) granted relief considering the binding decisions on the issue. Aggrieved, Revenue is in appeal before the Tribunal. After hearing both the parties on this issue and on perusal of the said decision of the CIT (A), we find, the conclusions drawn by the CIT (A) in this regard are fair and reasonable and it does not call for any interference. Accordingly, Ground no.3 is dismissed.

9. Considering the our decision on ground no.3, the other issues raised in Grounds no. 4 and 5 are also dismissed being consequential in nature. Thus, Grounds no. 4 and 5 are dismissed.

10. In the result, **appeal of the Revenue is dismissed.**

II. ITA No.1791/M/2013 (AY 2009-2010) (By Revenue)

11. This appeal filed by the Revenue on 6.3.2013 is against the order of the CIT (A)-6, Mumbai dated 20.12.2012 for the assessment year 2009-2010. In this appeal, Revenue raised 4 grounds in toto.

12. At the outset, Ld Counsel for the assessee brought our attention to the issue raised in Ground no.1 and mentioned that the ground relates to the decision of the CIT (A) on the allowability of the provisions for mark-to-market loss. This issue is identical to the Ground no.3 of the Revenue's appeal **ITA No.7658/M/2011** for the AY 2008-2009, which is adjudicated in the above paras of this order. Considering the commonality of the issue, in our view, consistent to the above, the ground raised by the Revenue is required to be dismissed. We order accordingly. Thus, Ground no.1 raised by the Revenue is dismissed.

13. The issue raised in Grounds no.2 to 4 of this appeal relates to the disallowance u/s 14A read with Rule 8D(2) of the Act. Revenue is aggrieved with the relief granted by the CIT (A) considering the applicability of the clauses (ii) and (iii) of Rule 8D(2) of the Rules. In the first appellate proceedings, CIT (A) granted relief to the assessee in respect of the addition made in clause (ii) of Rule 8D(2) of the Rules, relying on the binding judgment of the Hon'ble jurisdictional High Court in

the case of CIT vs Reliance Utilities & Power Limited (313 ITR 340) (Bom). Before us, Ld Counsel for the assessee relied heavily on the judgment of the of the Bombay High Court in the case of HDFC Bank Limited vs. DCIT (383 ITR 529) (Bom), which is in substance relevant for the proposition *no disallowance under clause (ii) is needed if the own funds are more than the investment*. Considering the same, we agree with the conclusions drawn by the CIT (A) on this issue. Similarly, referring to the relief granted by the CIT (A) in excluding the investments in stock-in-trade for the purpose of disallowance under Rule 8D(2)(ii) and (iii) of the Rules, after hearing the Ld Representatives of both the parties, we are of the opinion, the said conclusions drawn by the CIT (A) are fair and reasonable and it does not call for any interference. Further, it is relevant to mention that while calculating the average investments, only the dividend yielded investments should alone be considered for quantifying the disallowance under clause (iii) of Rule 8D(2) of the Rules. In our opinion, on this issue also, the conclusions drawn by the CIT (A) are sustainable. Therefore, the order of the CIT (A) on this issue is fair and reasonable and it does not call for any interference. Accordingly, relevant grounds raised by the Revenue are dismissed.

14. In the result, appeal of the Revenue is dismissed.

III. Cross appeals for the AY 2010-2011 (In the case of Edelweiss Finance & Investment Ltd)

**ITA No.4328/M/2014 (By Assessee)
ITA No.4651/M/2014 (By Revenue)**

15. Both these cross appeals are filed against the order of the CIT (A)-6, Mumbai dated 22.4.2014.

16. In the assessee's appeal (ITA No.4328/M/2014), the only issue raised relates to the disallowance u/s 14A read with Rule 8D(2)(iii) of the Rules. This issue is identical to that of the ones raised by the assessee in its appeal (**ITA No.6610/M/2011**). While adjudicating the issue raised in the AY 2008-09, in principle we allowed the ground in favour of the assessee and the AO is directed to re-calculate the disallowance under Rule 8D(2)(iii) of the Rules and also to apply the ratio laid down in the judgment of the Hon'ble Bombay High Court in the case of

HDFC Bank Limited (supra). Considering the commonality of the issue, the said decision applies to the instant ground too. We order accordingly.

17. In the result, appeal of the assessee is allowed protanto.

18. In the Revenue's appeal (**ITA No.4651/M/2014**), the only issue raised relates to the decision of the CIT (A) in deleting the addition made by disallowing mark-to-market loss claimed by the assessee. This issue is identical to that of the ones raised by the Revenue vide Ground no.3 of its appeal **ITA No.7658/M/2011** for the AY 2008-2009. While adjudicating the ground, we upheld the decision of the CIT (A), who relied on the binding judgments while granting relief to the assessee. Considering the commonality of the issue, our decision given therein squarely applies to the instant appeal too. Accordingly, we upheld the decision of the CIT (A) on the issue and grounds raised by the Revenue are dismissed.

19. In the result, appeal of the Revenue is dismissed.

IV. Cross Appeals for the AY 2008-2009 (In the case of Edelweiss Commodities Ltd)

ITA No.6611/M/2011 (By Assessee)
ITA No.7662/M/2011 (By Revenue)

20. Both these cross appeals are filed against the order of the CIT (A)-7, Mumbai dated 7.7.2011.

21. In the assessee's appeal (ITA No.6611/M/2011), the only issue raised relates to the disallowance u/s 14A read with Rule 8D(2)(iii) of the Rules. This issue is identical to that of the ones raised by the assessee in its appeal (**ITA No.6610/M/2011**). While adjudicating the issue raised in the said appeal for the AY 2008-09 (supra), in principle we allowed the ground in favour of the assessee and the AO is directed to re-calculate the disallowance under Rule 8D(2)(iii) of the Rules and also to apply the ratio laid down in the judgment of the Hon'ble Bombay High Court in the case of HDFC Bank Limited (supra). Considering the commonality of the issue, the said decision applies to the instant ground too. We order accordingly.

22. In the result, appeal of the assessee is allowed protanto.

23. In the Revenue's appeal (**ITA No.7662/M/2011**), the Revenue raised various issues. The **first issue (Grounds no.1 and 2)** raised in this appeal relates to the disallowance u/s 8D(2)(ii) of the Rules. This issue is identical to that of the one raised by the Revenue in its appeal **ITA No.7658/M/2011** for the AY 2008-2009, wherein the decision of the CIT (A) is upheld and the relevant grounds are dismissed. Considering the commonality of the issue, our decision given therein squarely applies to the instant grounds too. Accordingly, grounds no.1 and 2 raised by the Revenue are dismissed.

24. The **second issue** (Ground no.3) raised by the Revenue relates to the decision of the CIT (A) in deleting the addition made by disallowing mark-to-market loss claimed by the assessee. This issue is identical to that of the ones raised by the Revenue vide Ground no.3 of its appeal **ITA No.7658/M/2011** for the AY 2008-2009. While adjudicating the ground, we upheld the decision of the CIT (A), who relied on the binding judgments while granting relief to the assessee. Considering the commonality of the issue, our decision given therein squarely applies to the instant appeal too. Accordingly, we upheld the decision of the CIT (A) on the issue and ground raised by the Revenue is dismissed.

25. Considering the our decision on ground no.3, the other issues raised in Grounds no. 4 and 5 are also dismissed being consequential in nature. Thus, Grounds no. 4 and 5 are dismissed.

26. In the result, **appeal of the Revenue is dismissed.**

VI. ITA No.1793/M/2013 (AY 2009-2010)
(By Revenue)
(In the case of Edelweiss Commodities Ltd)

27. This appeal filed by the Revenue on 6.3.2013 is against the order of the CIT (A)-6, Mumbai dated 20.12.2012 for the assessment year 2009-2010. In this appeal, Revenue raised 4 grounds in toto.

28. Ground no.1 relates to the decision of the CIT (A) on the allowability of the provisions for mark-to-market loss. This issue is identical to the Ground no.3 of the Revenue's appeal **ITA No.7658/M/2011** for the AY 2008-2009, which is adjudicated in the above paras of this order. Considering the commonality of the

issue, in our view, consistent to the above, the ground raised by the Revenue is required to be dismissed. We order accordingly. Thus, Ground no.1 raised by the Revenue is dismissed.

29. The issue raised in Grounds no.2 to 4 of this appeal relates to the disallowance u/s 14A read with Rule 8D(2) of the Act. This issue is identical to that of the ones decided by us while adjudicating the Revenue's appeal **ITA NO. 1791/M/2013 (AY 2009-2010)** in the above paras of this order. Considering the commonality of the issues, our decision given therein squarely applies to the instant grounds too. Considering the same, the issue raised by the Revenue in Grounds no.2 to 4 are dismissed.

30. In result, appeal of the Revenue is dismissed.

Conclusively, all the appeals of the assessee are allowed protanto and the Revenue's appeals are dismissed.

Order pronounced in the open court on 16th December, 2016.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
मुंबई Mumbai; दिनांक 16.12.2016
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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

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

सत्यापित प्रति //True Copy//

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

Sr.No	Details	Date	Initials	Designation
1	Draft dictated on	17.12.2016		Sr.PS/PS
2	Draft Placed before author	17.12.2016		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			