

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.5688/M/2013  
Assessment Year: 2010-11**

M/s. JMP Securities Pvt. Ltd., Elite Square, 27, Parin Nariman Street, Bazargate, Near Khaugalli, Opp. Parsi Agyari, Fort, Mumbai – 400 001 <b>PAN: AAACJ 8850C</b>	Vs.	Additional Commissioner of Income Tax, Range – 4(3), Room No.649, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri K. Gopal, A.R.  
Revenue by : Shri K. Mohandas, D.R.

Date of Hearing : 16.02.2016  
Date of Pronouncement : 19.02.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 08.08.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The assessee has taken two effective grounds of appeal. First ground is in relation to disallowance under section 14A of Rs.21,51,422/- and the second ground is in relation to disallowance of depreciation on car. At the outset, the Ld. A.R. of the assessee stated at bar that as per the instructions of his client, he does not press ground No.2. Ground No.2 is therefore dismissed as being not pressed.

3. Now coming to the ground No.1. The Ld. A.R. has stated that though in the return of income the assessee had not offered any disallowance under

section 14A on account of expenditure incurred for earning of exempt income, however, during the assessment proceedings, the assessee had offered disallowance of Rs.7,20,936/- under section 14A calculated as per the provisions of rule 8D of the Income Tax Rules, 1962. The AO, however, has made a disallowance of Rs.21,51,422/-. The AO, while doing so, has also considered the amount incurred for purchase of stock in trade in shares. The contention of the Ld. A.R. is that while calculating the disallowance under section 14A, the amount invested for the purpose of business i.e. on the shares which are held as stock in trade is required to be excluded. The Ld. A.R., in this respect, has relied upon the decision of the Hon'ble Bombay High Court in the case of "CIT vs. India Advantage Securities Ltd." in ITA No.1131 of 2013 vide order dated 17.03.2015 wherein the Hon'ble Bombay High Court has upheld the finding of the Tribunal holding that while making the disallowance under rule 8D, the shares held as stock in trade should not be considered; only the shares taken as investment in the account be considered for computation of disallowance of expenditure under rule 8D. The Ld. A.R. has submitted that the dividend earned in respect of shares held in stock in trade is incidental to the business of the assessee and the investment in the shares held as stock in trade was not made for earning of exempt income.

4. We have examined the above contentions of the assessee. We find that the Tribunal in the case of "DCIT vs. India Advantage Securities Ltd." in ITA No.6711/M/2011 vide order dated 14.09.2012 while relying upon the decision of the Hon'ble Kerala High Court in the case of "CIT vs. Smt. Leena Ramachandran (339 ITR 296) and further on the decision of the Hon'ble High Court of Karnataka in the case of "CCI Ltd. vs. JCIT" 250 CTR 291 has held that disallowance under section 14A in relation to dividend received from trading shares cannot be made. The said finding of the Tribunal has been upheld by the Hon'ble Jurisdictional Bombay High Court in the case of "CIT vs. India Advantage Securities Ltd." in ITA No.1131 of 2013 vide order dated

17.03.2015 (supra). The said decision holds binding precedent upon this Tribunal.

5. The Ld. D.R. has also fairly agreed that the issue is squarely covered in favour of the assessee by the above decision of the Hon'ble Bombay High Court (supra).

6. This issue is accordingly decided in favour of the assessee and the AO is directed to compute the disallowance by excluding the amount invested in stock in trade.

7. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

**Order pronounced in the open court on 19.02.2016.**

**Sd/-**  
**(Ashwani Taneja)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 19.02.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.