

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2437/Mum/2011
Assessment Year: 2007-08**

ICICI Securities Ltd.
ICICI Centre, H.T. Parekh
Marg, Churchgate,
Mumbai-400020.

Vs.

ACIT-4(1)
Mumbai.

PAN No. AAACI0996E

(Appellant)

(Respondent)

**ITA No. 2702/Mum/2011
Assessment Year: 2007-08**

DCIT-4(1)
6th floor Aayakar Bhavan,
M.K. Road
Mumba-400020.

Vs.

ICICI Securities Ltd.
ICICI Centre, H.T.
Parekh Marg,
Churchgate,
Mumbai-400020.

PAN No. AAACI0996E

(Appellant)

(Respondent)

**ITA No. 1906/Mum/2012
Assessment Year: 2008-09**

ICICI Securities Ltd.
ICICI Centre, H.T. Parekh
Marg, Churchgate,
Mumbai-400020.

Vs.

ACIT-4(1)
6th floor Aayakar
Bhavan, M.K. Road
Mumba-400020.

PAN No. AAACI0996E

(Appellant)

(Respondent)

ITA No. 2346/Mum/2012
Assessment Year: 2008-09

DCIT-4(1)
Mumbai.

Vs. ICICI Securities Ltd.
ICICI Centre, H.T.
Parekh Marg,
Churchgate,
Mumbai-400020.

PAN No. AAACI0996E

(Appellant)

(Respondent)

Assessee by: Mr. Yogesh A. Thar, AR
Revenue by: Mr. B.C.S. Naik, DR

Date of Hearing : 20/06/2017
Date of pronouncement: 15/09/2017

ORDER

PER N.K. PRADHAN, AM

Whether we should sustain a fundamental aspect permeating through different assessment years which are found as a fact one way or the other? This is what this case is all about.

These four cross appeals-two by the assessee and the other two by the Revenue for the assessment year 2007-08 & 2008-09 involve some common issues. As such we are proceeding to dispose them off by this consolidated order for the sake of convenience.

ITA No. 2437/Mum/2011
Assessment Year: 2007-08

2. The 1st ground in assessee's appeal is against the disallowance of Rs.48,65,79,000/- paid towards client assistance charges. During the

financial year under consideration, the assessee-company had paid Rs.48,65,79,000/- to ICICI Bank Ltd. towards client assistance charges.

The client assistance charges comprise of:

Sr. No.	Particulars	No. of employees /sessions	Amount (Rs.)
I.	Deputed Staff Cost		
1.	Metro Locations	289	226,287,000
2.	Urban Locations	241	169,182,000
3.	Semi Urban Locations	120	66,960,000
4.	Rural Locations	7	31,50,000
			465,579,000
II.	Session Cost		21,000,000
		Total	486,579,000

The above client assistance charges were paid to ICICI Bank Limited (Service provider). However, the Assessing Officer (AO) has disallowed client assistance charges of Rs.48,65,79,000/- paid to ICICI Bank Ltd. on the ground that these payments have not been laid out or expended wholly and exclusively for the purpose of business for the assessee-company. The AO has followed similar disallowance made in earlier assessment years and disallowed the amount of Rs.48,65,79,000/-.

2.1 Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the above disallowance made by the AO on the following reason:

“The significant point to be noted is that all the customers of the appellant company are also made to become customers of ICICI for maintenance of bank account and de-mat account through three-in-one account. Consequently, M/s ICICI Bank Ltd. was a major beneficiary in three in one account system but no amount has been charged by the appellant company for the services rendered to the M/s ICICI Bank Ltd. Although, the banks are not permitted to do regular trading in shares in equity market because banks operate in the field of debt market. On the other hand, the appellant company is operating as a broker in equity market. Yet, the brokerage earned in the equity market by the appellant company has been transferred to the M/s ICICI Bank Ltd. in disguise of client assistance charges. Because names being similar, a normal customer gets confused and fails to differentiate between M/s ICICI Securities and M/s ICICI Bank Ltd. as two separate companies while operating three in one account of the M/s ICICI Bank Ltd. and ultimately, M/s ICICI Bank Ltd. is a major gainer because of large deposits are moved with the bank and it also earns de-mat charges from the customers of the appellant company. In view of the above, I am inclined to agree with the views of the Assessing Officer that this expenditure has not been incurred wholly and exclusively for the business of the appellant company.”

2.2 Before us, the Ld. counsel submits that the issue is covered in favour of the assessee by the order of the ITAT ‘I’ Bench in assessee’s own case for the AY 2004-05 (ITA No. 6304/Mum/2008) and AY 2005-06 (ITA No. 6860/Mum/2008).

2.3 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A). He draws our attention to para 3.7.1 of the order of the Ld. CIT(A), which has been extracted at para 2.1 hereinabove.

2.4 We have heard the rival submissions and perused the relevant materials on record. We find that the instant issue is covered in favour

of the assessee-company by the order of the ITAT 'I' Bench in assessee's own case for the AY 2004-05 (ITA No. 6304/Mum/2008) and AY 2005-06 (ITA No. 6860/Mum/2008)

Facts being similar, we follow the above order of the Co-ordinate Bench mentioned above and delete the disallowance of Rs.48,65,79,000/- made by the AO. Thus the 1st ground of appeal is allowed.

3. The 2nd ground of assessee's appeal is against the disallowance of reimbursement expenses to ICICI Securities Limited (Now known ICICI Securities Primary Dealership Ltd. "ISECPD" of Rs.12,00,97,937/-. The AO has disallowed the above sum reimbursed to ISECPD on account of expenses incurred by them on behalf of the assessee-company on the ground that no TDS was deducted while making such payment.

3.1 In appeal the Ld. CIT(A) has held that ISECPD was a contractor rendering professional and technical services through its employees for the assessee-company. Therefore, TDS was deductible u/s 194C and 194J of the Act. The Ld. CIT(A) has held that since TDS was not deducted by the assessee-company, the AO is fully justified in disallowing the above payment u/s 40a(ia) of the Act.

3.2 Before us, the Ld. counsel submits that:

- a) Various expenses are recovered by ISECPD from the assessee-company by raising a debit note on monthly basis. These expenses include salary, staff welfare, canteen expenses, electricity, printing and stationery expenses, repairs, communication expenses, etc.

These expenses are incurred wholly and exclusively for the purpose of assessee-company's business.

- b) No TDS is deductible on payments made on account of reimbursement of expenses in light of various High Court and Tribunal decisions, where it has been held that reimbursement of expenses cannot be considered as having an income element embedded therein so as to deduct TDS.

3.2.1 The Ld. counsel further submits that the issue is covered in favour of the assessee by the order of the ITAT 'I' Bench, Mumbai in assessee's own case for the AY 2006-07 (ITA No. 1212/Mum/2010).

3.3 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A). He draws out attention to para 4.3 of the order passed by the Ld. CIT(A).

3.4. We have heard the rival submissions and perused the relevant materials on record. We find that similar issue arose before ITAT 'I' Bench, Mumbai in assessee's own case for the AY 2006-07. The Tribunal has followed the decision in *CIT vs. OCB Engineers* (214 taxman 121) (Bom.), *M/s Stratcap Securities (I) Pvt. Ltd. vs. ACIT* (ITA No. 7048/Mum/2008) (Mum), *ITO vs. Datamatics Software Pvt. Ltd.* (ITA No. 5433/Mum/2010) (Mum), *ACIT vs. M/s J.B. Boda Surveyors Pvt. Ltd.* (ITA No.4252/Mum/2009) (Mum), *ASK Wealth Advisors (P.) Ltd. vs. ACIT* (51 taxmann.com 128) (Mum) and held that no tax is deductible at source if payments are made merely towards reimbursement of expenses incurred on assessee's behalf by another entity.

Facts being similar, we follow the above order of the Co-ordinate Bench and delete the disallowance of Rs.12,00,97,937/- made by the AO. Thus the 2nd ground of appeal is allowed.

4. The 3rd ground of assessee's appeal is against disallowance made by the AO of Rs.59,06,659/- as bad debts. The AO noted that during the course of assessment proceedings the assessee failed to file details in support of its claim for bad debts. Therefore, he disallowed Rs.59,06,659/-.

4.1 In appeal, the Ld. CIT(A) confirmed the above disallowance of Rs.59,06,659/- made by the AO on the ground that the assessee-company failed to file party-wise details and actual proof of write off in ledger account of a particular debtor. The Ld. CIT(A) has further directed the AO to verify the assessment record and rectify his assessment order to add back a further sum of Rs.79,88,905/- which was claimed by the assessee-company as bad debts and subsequently withdrawn by it.

4.2 Before us, the Ld. counsel submits that the assessee-company need not prove that the debt has become bad, if the debt is written off as irrecoverable in the books of accounts as held in *TRF Ltd. vs. CIT* (323 ITR 397)(SC). He further submits that the assessee-company had claimed Rs.1,38,95,564/- as bad debts for the captioned assessment year. Out of it, the IPO commission amounting to Rs.79,88,905 was accrued as at March 31st, 2006 and was wrongly reversed to Bad debts account during the captioned assessment year. The same was offered for tax during the assessment year 2006-07.

He further submits that an amount of Rs.25,12,280/- was written off towards unrecoverable account opening charges. Normally, it represents the cases 'where cheque is not honoured by the bank due to various reasons viz. insufficient funds in account, account closed, signature differs, etc'. Also, an amount of Rs.33,94,379/- represents write off of IPO commission, marketing fees, etc. The above amounts are written off in the books of accounts and has to be allowed as bad debts u/s 36(1)(vii) r.w.s 36(2) of the Act.

The Ld. counsel relies on the decision in the case *DIA vs. Oman International Bank* (313 ITR 128) (Bom.) and *CIT vs. Star Chemicals (Bombay) Limited* (313 ITR 126) (Bom).

4.3 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A) and submits that in fact the assessee-company failed to file before the AO party wise details and actual proof of write off in ledger account of a particular debtor.

4.4 We have heard the rival submissions and perused the relevant materials on record. In the case of *T.R.F. Ltd. (supra)*, the Hon'ble Supreme Court has held that:

"After 01.04.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."

In the case of *Oman International Bank (supra)* it has been held that after amendment to section 36(1)(vii), it is neither obligatory nor is there any burden on the assessee to proof that debt written off by

him is indeed a bad debt as long as it is *bona fide* and is based on commercial wisdom or expediency.

In the case of *Star Chemicals (Bombay) Limited (supra)* it has been held that if assessee has written off debt as bad debt, that would satisfy purpose of section 36(1)(vii).

We follow the above decisions which are squarely applicable to the present issue and delete the disallowance of Rs.59,06,659/- made by the AO towards bad debts. We also hold that the AO has correctly allowed Rs. 79,88,905/- as the assessee-company has offered it to tax in A.Y. 2006-07. We thus set aside the order of the Ld. CIT(A) on the above issue and allow the 3rd ground of appeal.

5. The 4th ground of assessee's appeal is against the disallowance of Rs.34,32,050/- made by the AO. During the year under consideration, the assessee-company has shown dividend income of Rs.7,82,717/- as exempt. The AO resorted to section 14A r.w. Rule 8D and made a disallowance of Rs.34,32,050/-.

5.1 In appeal, the Ld. CIT(A) found the disallowance of Rs.34,32,050/- made by the AO as reasonable and confirmed it.

5.2 Before us, the Ld. counsel of the assessee submits that Rule 8D is effective from 24.03.2008 and thus is not applicable for the AY 2007-08.

5.3 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

5.4 We have heard the rival submissions and perused the relevant materials on record. Rule 8D was notified by CBDT by the IT (Fifth

Amdt.) Rules 2008 w.e.f. 24.03.2008. Thus it is not applicable to the AY 2007-08. In such a case for AY 2005-06, the Hon'ble Bombay High Court in *CIT vs. M/s Godrej Agrovet Ltd.* (ITA No. 934 of 2011) has held the order of the Tribunal in restricting the disallowance only to the extent of 2% of the total exempt income as proper. We follow the above decision and direct the AO to restrict the disallowance only to the extent of 2% of the total exempt income. Thus the 4th ground of appeal is partly allowed.

6. In the result, the appeal of the assessee for the AY 2007-08 is partly allowed.

ITA No. 2702/Mum/2011
Assessment Year: 2007-08

7. The 1st ground of Revenue's appeal is against the deletion by the Ld. CIT(A) of disallowance @ 50% of client introduction fees paid to ICICI Securities (INC) (ISI) for non-USA based entities amounting to Rs.1,29,03,379/- u/s 40(A)(2b).

During the year under consideration, the assessee-company had claimed expenditure of Rs.2,58,06,758/- towards client introduction fees paid to ISI. However, the A.O disallowed a sum of Rs.1,29,03,379/- being 50% of client introduction fees paid for non-USA clients on the ground that it is covered u/s 40A(2) (b). The AO disallowed 50% of payment made to ISI for introducing non-USA based clients on the ground that the assessee-company had provided evidence of ISI rendering service on a continuous basis only to USA based client in the form of rules and regulations to be followed in USA and no evidence had been submitted of service rendered by ISI to non-USA based clients.

7.1 In appeal, the Ld. CIT(A) has found that (i) the AO has not been able to prove that excessive and unreasonable payment has been made to sister concern with matching examples, (ii) payment made to ISI was as per prevailing market rate and therefore, the AO was not justified in disallowing 50% of the client introduction fees paid to ISI.

The Ld. CIT(A) followed the order of his predecessor-in-office for the AY 2003-04, 2004-05, 2005-06 and 2006-07 and deleted the addition of Rs.1,29,03,379/- made by the AO.

7.2 Before us, the Ld. counsel submits that the assessee-company and ICICI Securities Holdings Inc (ISHI) are 100 % subsidiaries of ICICI Securities Limited. Further ICICI Securities Inc (ISI) is a 100% subsidiary of ISHI. Also ISI, having its branch offices in Singapore and London, is incorporated and registered in USA to provide brokerage, research and corporate finance services to institutional investors in the USA and other overseas countries, investing in securities of companies based in India. ISI is registered with the Securities and Exchange Commission as a broker-dealer and is a member of the National Association of Securities Dealers (NASD).

In addition, the Ld. counsel further submits:

- a) The payment made to ISI was genuine and in accordance with the terms of the agreement dated October 01, 2004
- b) As per the main clause of the aforesaid agreement, ISI would introduce to the assessee-company clients in USA and countries other than USA where permitted from time to time.

- c) The assessee-company would execute secondary trades of clients introduced by ISI on the National Stock Exchange and Bombay Stock Exchange.
- d) The assessee-company would pay to ISI client introduction fees as mutually decided between them.
- e) The assessee-company had earned substantial brokerage from the clients introduced and passed on only a certain percentage of brokerage earned as client introduction fees to ISI.
- f) The expenditure was incurred wholly and exclusively for the purpose of the business and in absence of any limitation put by the law the disallowance was unjustified and unwarranted.
- g) The provisions of section 40(A)(2)(b) of the Act do not cover the payments made to ISI, since ISI does not have any interest in the assessee-company.

It is stated by him such disallowance was deleted by the Ld. CIT(A) in assessee's own case in AYs 2003-04, 2004-05, 2005-06 and 2006-07.

The Ld. counsel also relies on the order dated 24.05.2016 of the ITAT 'I' Bench, Mumbai in assessee's own case for the AY 2004-05 (ITA No. 4778/Mum/2007).

7.3 On the other hand, the Ld. DR supports the order passed by the AO.

7.4 We have heard the rival submissions and perused the relevant materials on record. We find that the instant issue is covered in favour

of the assessee-company by the order of the Tribunal mentioned at para 7.2 hereinabove. Facts being similar, we follow the above order of the Co-ordinate Bench and uphold the order of the Ld. CIT(A). Thus the 1st ground of appeal is dismissed.

8. The 2nd ground of Revenue's appeal is against the deletion by the Ld. CIT(A) of the addition made by the AO on account of penalty of Rs.16,02,024/- for violation of the bye laws of the Stock Exchange. The penalties were levied by the Stock Exchange on account of bad delivery/short delivery, wrong claim of corporate benefits, late reporting, security deposit shortages, fund shortage and client code modification. The AO has disallowed penalty paid to Stock Exchange amounting to Rs.16,02,024/- on the ground that it is ground that it is penal in nature.

8.1 In appeal, the Ld. CIT(A) has held that Explanation to section 37(1) is not applicable to such type of expenditure. Therefore, he deleted the disallowance of Rs.16,02,024/- made by the AO.

8.2 Before us, the Ld. counsel of the assessee relied on the decision by the Hon'ble Bombay High Court in the case of *Income Tax Commissioner vs. Angel Capital and Debit Market Ltd.* [ITA (L) No. 475 of 2011].

8.3 On the other hand, the Ld. DR supports the order passed by the AO.

8.4 We have heard the rival submissions and perused the relevant materials on record. In the case of *Angel Capital and Debit Market Ltd.*

(supra), the following question of law raised by the Revenue was before the Hon'ble High Court

“(C) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was justified in deleting the disallowance made by the Assessing Officer of claim of the Assessing Company for a deduction of payment of Rs.6,51,240/- towards penalty paid to Stock Exchange even though such penalty payment was clearly disallowance under Explanation to Section 37(1) of the Income Tax Act?”

The Hon'ble High Court in the above case agreed with the order of the Tribunal that the amount paid were not on account of any infraction of law and hence allowable as business expenditure. Facts being similar, we follow the above decision and uphold the order of the Ld. CIT(A). The 2nd ground of appeal is thus dismissed.

9. The 3rd ground of Revenue's appeal is against the deletion by the Ld. CIT(A) of disallowances of Rs.8,24,83,381/- made by the AO on account of transaction charges, VSAT and lease line charges made u/s 40(a)(ia) paid to Stock Exchanges. During the year under consideration, the assessee-company has debited Rs.3,33,264/-, Rs.3,11,479/- and Rs.8,18,38,638/- on account of lease line charges, VSAT charges and transaction charges paid to Stock Exchanges respectively. These charges are payable on account of transactions entered in securities through these Exchanges. The AO has disallowed the aforesaid expenses on the grounds that these expenses are liable for deduction of tax at source (TDS) u/s 194J, since services rendered by Exchanges for which such payments are made are fees for technical services (FTS). Based on such observation, AO has disallowed

aforesaid expenses u/s 40(ia) since assessee-company has not deducted TDS while making payments to the Exchanges.

9.1 In appeal, the Ld. CIT(A) followed the decision by ITAT in the case of *M/s Kotak Securities* (25 SOT 440), *M/s Angel Broking Ltd.* (35 SOT 457) and *HDFC Securities* (ITA No. 7036/Mum/2008) 19.03.2010 and deleted the addition of Rs.8,24,83,381/- made by the AO.

9.2 Before us, the Ld. counsel supports the order passed by the Ld. CIT(A). He further submits that similar disallowance made by the AO has been deleted by the Ld. CIT(A) in assessee's own case in AY 2005-06 and AY 2006-07. Reliance is also placed by him on the decision in *CIT vs. Kotak Securities Ltd.* 383 ITR 1 (SC), *ACIT vs. Twenty First Century Shares and Securities Ltd.* (2013) 39 taxmann.com 176(Mumbai-Trib), *Centrum Broking Ltd. vs. ACIT* (2015) 59 taxmann.com 451 (Mumbai-Trib).

9.3 On the other hand, the Ld. DR supports the order passed by the AO.

9.4 We have heard the rival submissions and perused the relevant materials on record. In *Kotak Securities Ltd. (supra)*, it has been held that:

“Service made available by Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which transaction charges are paid by members of BSE are common services that every member of Stock Exchange is necessarily required to avail of to carry out trading in securities in Stock Exchange; such services do not amount to ‘technical services’ provider by Stock Exchange, not being services specifically sought for by user or consumer and, therefore, no TDS would be deductible under section 194J on payments made for such services.”

Also in the case of *Twenty First Century Shares and Securities Ltd. (supra)* and *Centrum Broking Ltd. vs. ACIT (supra)*, it is held that assessee is not required to deduct tax at source u/s 194J in respect of lease line charges and VSAT charges paid to stock exchange.

The present issue is squarely covered by the above decisions. Therefore, we uphold the order of the Ld. CIT(A) and dismiss the 3rd ground of appeal.

10. Thus the appeal filed by the Revenue for the AY 2007-08 is dismissed.

ITA No. 1906/Mum/2012
Assessment Year: 2008-09

11. The 1st ground of assessee's appeal is against the disallowance of client assistance charges paid of Rs.17,18,85,698/-. The AO has followed the order of the earlier assessment year and disallowed the client assistant charges of Rs.17,18,85,698/- claimed by the assessee-company. In appeal, the Ld. CIT(A) has followed the order passed by his predecessor-in-office for the A.Y. 2007-08 and confirmed the disallowance made by the AO.

11.1 The client assistance charges were paid to ICICI Bank as per the service provider agreement dated April 25, 2007 (effective from April 1, 2006) along with the amendment thereto i.e. on July 13, 2007 and September 25, 2007.

We have deleted similar disallowance made by the AO in A.Y.2007-08. We have given the reasons at para 2.4 hereinbefore. We follow the above reasons, delete the disallowance of Rs.17,18,85,698/- made by the AO and allow the 1st ground of appeal.

12. The 2nd ground of assessee's appeal is against the disallowance of reimbursement of expenses to ISECPD of Rs.1,92,05,859/-. The AO has disallowed the above sum on the ground that no TDS is deducted while making such payment.

12.1 We find that the reasons given by the AO, the Ld. CIT(A) are same as the one given for the AY 2007-08. The arguments of the Ld. counsel of the assessee and the Ld. DR are also the same as in AY 2007-08.

12.2 In view of the above, we delete the disallowance of Rs.1,92,05,859/- made by the AO on the basis of our reasons recorded at para 3.4 hereinbefore and allow the 2nd ground of appeal.

13. The 3rd ground of assessee's appeal is against the disallowance of Rs.11,36,325/- made by the AO u/s 14A. We find that the AO has made the disallowance u/s 14A r.w. Rule 8D. In appeal, the above disallowance has been confirmed by the Ld. CIT(A).

13.1 Before us, the Ld. counsel of the assessee submits that the net worth of the assessee is much more than investments made in the shares and units and hence, applying the ratio of decision of the Hon'ble Bombay High Court in *Reliance utilities* (313 ITR 340), it is presumed that investment made in these equity shares and units are made out of own funds and not out of borrowed funds. Hence, no disallowance should be made on account of interest expense u/s 14A of the Act.

13.2 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

13.3 We have heard the rival submissions and perused the relevant materials on record. We find that during the impugned assessment year the net worth of the assessee-company is much more than investment made in the shares and units. In *HDFC Bank Ltd. vs. DCIT* [2016] 67 taxmann.com 42 (Bom), the Hon'ble Bombay High Court referring to the decision in *CIT vs. HDFC Bank Ltd.* [2014] 366 ITR 505 (Bom) and *CIT v. Reliance Utilities & Power Ltd.* [2009] 313 ITR 340 (Bom) held as under :

“15. It is clear that for the first time in the case of *HDFC Bank Ltd.* (supra) that this Court took a view that the presumption which has been laid down in *Reliance Utilities & Power Ltd.* (supra) with regard to investment in tax free securities coming out of assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies, when applying Section 14A of the Act. Thus, the decision of this Court in *HDFC Bank Ltd.* (supra) for the first time on 23rd July, 2014 has settled the issue by holding that the test of presumption as held by this Court in *Reliance Utilities and Power Ltd.* (supra) while considering Section 36(1)(iii) of the Act would apply while considering the application of Section 14A of the Act. The aforesaid decision of this Court in *HDFC Bank Ltd.* (supra) on the above issue has also been accepted by the Revenue in as much as even though they have filed an appeal to the Supreme Court against that order on the other issue therein viz. broken period interest, no appeal has been preferred by the Revenue on the issue of invoking the principles laid down in *Reliance Utilities & Power Ltd.* (supra) in its application to Section 14A of the Act.”

In view of the above decision, we delete the disallowance of Rs.10,47,740/- made by the AO under Rule 8D(2) (ii).

13.3.1 In *Godrej & Boyce Mfg. Co. Ltd. vs. Dy. CIT* (2010) 194 Taxman 203 (Bom.) the Hon'ble Bombay High Court has explained Rule 8D as under:

“As regard Rule 8D(2)(iii), it had been submitted that some mechanism or formula had to be adopted for attributing part of the administrative / managerial expenses to tax-exempt investment income. The administrative expenses attributable to tax-free investment income have a fixed component and a variable component. A view was taken that the disallowance should also be linked to the value of the investment rather than the amount of exempt income. Under Portfolio Management Schemes (PMS), the fee charged ranges between 2 and 2.5 per cent of the portfolio value which would be inclusive of a profit element for the portfolio manager.

While the fixed administrative expenses were excluded on the ground that in the case of a large corporate taxpayer they would be spread over a large number of voluminous activities, the variable expenses were computed at one-half per cent of the value of the investment.”

Thus we confirm the disallowance of Rs.88,585/- made by the AO under Rule 8D(2)(iii).

In view of the above, the 3rd ground of appeal is partly allowed.

14. The 4th ground of assessee's appeal is against the disallowance of loss on future and option 'marked to market margin' of Rs.1,96,414/-. We notice that the issue is covered in favour the assessee by the order of the Tribunal in the case of *Edelweiss Capital Ltd. vs. ITO* (2010) 8 taxmann.com 157(Mumbai) and *Centrum Broking Ltd. vs. ACIT* (2015) 59 taxmann.com 451(Mumbai) wherein it has been held that 'Market to market loss on derivatives could not be treated as contingent

liability and hence, same was to be allowed as deduction u/s 37(1)'. Facts being similar, we follow the above decisions and delete the disallowance of Rs.1,96,414/- made by the AO. Thus the 4th ground of appeal is allowed.

15. In the result, the appeal of the assessee for the AY 2008-09 is partly allowed.

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16. The sole ground of appeal by the Revenue is against the deletion of Rs.84,65,185/- made by the Ld. CIT(A) on account of client introduction fees. The AO has followed the earlier assessment order while making the above disallowance. In appeal, the Ld. CIT(A) has followed the order of his predecessor-in-office for the AY 2007-08 and allowed the appeal filed by the assessee.

16.1 We find that the arguments of the Ld. counsel and the Ld. DR are also the same as in AY 2007-08.

16.2 In view of the above, we follow the reasons given by us at para 7.4 hereinbefore, uphold the order of the Ld. CIT(A) and dismiss the above ground of appeal.

17. In the result, the appeal of the Revenue for the AY 2008-09 is dismissed.

18. To sum up (1) the appeal of the assessee for the AY 2007-08 is partly allowed whereas the appeal of the Revenue is dismissed, (2) the appeal of the assessee for the AY 2008-09 is partly allowed whereas the appeal of the Revenue for the AY 2008-09 is dismissed.

Order pronounced in the open Court on 15/09/2017.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;
Dated: 15/09/2017
Rahul Sharma, Sr. P.S.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai