



ITA No4492/M/2015 & CO 21/M/2017  
Safe Enterprises  
Assessment Year 2011-12

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI MAHAVIR SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4492/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Assistant Commissioner Of Income Tax 19(3)</b> Matru Mandir Tardeo Road, Mumbai – 400 007	<b>बनाम/ Vs.</b>	<b>Safe Enterprises</b> 198, Manek 11, L.D.Ruparel Marg Mumbai-400 006
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

Cross Objection No.21/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Safe Enterprises</b> 198, Manek 11, L.D.Ruparel Marg Mumbai-400 006	<b>बनाम/ Vs.</b>	<b>Assistant Commissioner Of Income Tax 19(3)</b> Matru Mandir, Tardeo Road Mumbai – 400 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>ABHFS-4029-H</b>	:	
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	M.M.Golvale & Hormuzol Jamshedji, Ld.AR's
<b>Revenue by</b>	:	V. Justin, Ld.DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	29/08/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04 /10/2017



## आदेश / O R D E R

### Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by Revenue for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-30 [CIT(A)], Mumbai dated 06/05/2015 *qua* relief provided to the assessee against disallowance u/s 14A. The Ld. Departmental Representative [DR] has withdrawn Ground No. 4 during hearing before us by filing Revised Form 36 since the same was erroneously been raised by the revenue and no such issue was involved in the appeal and therefore, the same is dismissed in *limine*. The assessee has filed cross-objections against the same.

2.1 Facts leading to the dispute are that the assessee being *resident firm* engaged in the *dealing & investment in Shares, Securities & Commodities* was assessed for impugned AY u/s 143(3) on 28/02/2014 at Rs.4,90,15,650/- after certain additions / disallowances as against returned income of Rs.3,99,55,527/- filed by the assessee on 19/08/2011.

2.2 During assessment proceedings, it was noted that the assessee earned exempt dividend income of Rs.58,63,139/- including dividend of Rs.54,86,125/- earned on shares held as *stock-in-trade* and hence the same, in the opinion of Ld. AO, called for disallowance u/s 14A. The assessee contended that no expenses were incurred to earn the said income and the majority of dividend was received from *stock-in-trade* where the main motive was to earn *business income* and therefore,



disallowance was not justified. However, Ld. AO applying the ratio of Mumbai Tribunal in *D.H.Securities Pvt. Ltd. Vs. DCIT [ITA 5724/M/2011 dated 27/11/2013]* computed disallowance as per Rule 8D aggregating to Rs.91,70,894/- which comprised of disallowance for direct expenses for Rs.41,10,331/- u/r 8D(2)(i) & expense disallowance @0.5% for Rs.50,60,563/- u/r 8D(2)(iii). After adjusting *suo-moto* disallowance of Rs.1,10,770/- made by the assessee, the differential amount of Rs.90,60,124/- was added to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 06/05/2015 where the assessee, with detailed calculations, drew attention to the fact that Ld. AO disallowed expenditure which were not at all connected with the earning of exempt income and therefore, the disallowance was erroneous and not justified. The attention was drawn to the fact that the assessee suffered disallowance of Rs.91.70 Lacs out of total expenditure of Rs.145.30 Lacs claimed by him whereas exempt income constituted only 0.0005% of the total activity carried out by the assessee during the year. The Ld. AR also contended that figures of investment were wrongly taken by Ld. AO and the case law relied upon by Ld. AO was distinguishable on the facts of the case. In nutshell, the Ld. AR stressed the point that majority of expenses were incurred towards sale & purchase of shares which constituted *business income* for the assessee and exempt income constituted insignificant portion of total activities carried out by the assessee and therefore, *suo-moto* disallowance made by assessee was sufficient to take care of the said



disallowance. The Ld. CIT(A) after considering the same restricted the impugned disallowance to Rs.3.12 Lacs which comprised of disallowance u/r 8D(2)(i) for Rs.1.36 Lacs & u/r 8D(2)(iii) for Rs.1.75 Lacs. Aggrieved, the revenue is in appeal before us whereas the assessee has filed cross objections against the same which contest additions sustained by Ld. CIT(A).

4. The Ld. DR contended that application of Rule 8D was mandatory notwithstanding the fact that whether the shares were held as stock-in-trade or as an investment. Our attention is further drawn to the fact that the assessee made *suo-moto* disallowance in the return of income and therefore, Rule 8D, beyond doubt, was applicable to the assessee and the disallowance has to be computed in terms of Rule 8D and the same has to be applied in *toto*.

5. Per *Contra*, Ld. Representative for Assessee [AR] reiterating the contention as raised before first appellate authority placed reliance on the decision of this Tribunal rendered in *DCIT Vs. India Advantage Securities Ltd.* [ITA No. 6711/Mum/2011 order dated 14/09/2012] for the contention that no disallowance was warranted in case shares were held as stock-in-trade.

6. We have heard the rival contentions and perused relevant material on record. Undisputed facts as emanating from perusal of financial statements of impugned AY are that the assessee has earned income from *Share Trading Activities* which has been offered / assessed under the head *business income*. All the shares are held as *Stock-in-Trade* as per details given in Schedule-5 and as evident from Balance Sheet



placed on record. The assessee has opening investment in certain *mutual fund* for Rs.443.08 Lacs whereas closing investment stood at *Nil*. The assessee has claimed total expenses of Rs.145.30 Lacs in the Profit & Loss Account against total income of Rs.601.11 Lacs. The exempt income reflected by assessee are dividend from Shares held as stock-in-trade Rs.54.86 Lacs, dividend from current investments Rs.3.77 Lacs and exempt Bond interest Rs.1.39 Lacs.

7. So far as the question whether Section 14A disallowance is called for in case the shares are held as stock-in-trade is concerned, we find that the issue stood squarely in assessee's favor by the ratio of following judicial pronouncements:-

- (i) *DCIT Vs. India Advantage Securities Ltd.*  
[ITAT Mumbai ITA No. 6711/Mum/2011 order dated 14/09/2012]  
[as confirmed by Hon'ble Bombay High Court by way of non-admission of revenue's appeal 2015 79 Taxmann.com 370]
- (ii) *CCI Ltd. Vs. JCIT*  
[Hon'ble Karnataka High Court 2012 20 Taxmann.com 196]
- (iii) *PCIT Vs. State Bank of Patiala*  
[Hon'ble Punjab & Haryana High Court 2017 78 Taxmann.com 3]
- (iv) *CIT Vs. G.K.K. Capital Markets (P.) Ltd.*  
[Hon'ble Calcutta High Court 2017 78 Taxmann.com 341]

Respectfully following the above, we conclude that shares held as stock-in-trade do not attract disallowance u/s 14A.

8. Now coming to quantum of disallowance u/s 14A against investments made by the assessee, we are of the considered opinion that no disallowance is warranted for u/r 8D(2)(i) since majority of the



expenses are directed only towards *share trading activity* carried out by the assessee. However, disallowance u/r 8D(2)(iii) is called for since the assessee has reflected opening investment in the *Balance Sheet*. Accordingly, the same is to be computed @0.5% of average investment which comes to Rs.1,10,770/- and which is the same as *suo-moto* made by the assessee in the return of income. Hence, disallowance u/r 8D(2)(iii) to the extent of Rs.1,10,770/- is confirmed. The Ld. AO is directed to modify the assessed income including income u/s 115JB, if required, in terms of our above order.

9. Resultantly, revenue's appeal stands dismissed whereas cross objections filed by assessee stands partly allowed.

*Order pronounced in the open court on 04<sup>th</sup> October, 2017.*

**Sd/-**  
**(Mahavir Singh)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :04.10.2017  
Sr.PS:- *Thirumalesh*

**आदेश की प्रतिलिपि □ ग्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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