

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2700/MUM/2016
Assessment Year: 2012-13**

Asst. Commissioner of
Income Tax-19(3),
Room No. 206, 2nd floor,
Matru Mandir, Tardeo,
Mumbai-400007

M/s Safe Enterprises
Vs. 19, B, Manek, 11, L.D.
Ruparel Marg, Napean
Sea Road,
Mumbai-400006

PAN No. ABHFS4029H

Appellant

Respondent

**ITA No. 2036/MUM/2016
Assessment Year: 2012-13**

Safe Enterprise
C/o. Kalyaniwalla & Mistry,
Army & Navy Building, 3rd
floor, 148, M.G. Road, Fort,
Mumbai-400001

Asst. Commissioner of
Vs. Income Tax-19(3),
Room No. 206, 2nd
floor, Matru Mandir,
Tardeo,
Mumbai-400007

PAN No. ABHFS4029H

Appellant

Respondent

Assessee by : Mr. M.M. Golvala, AR
Revenue by : Mr. Ram Tiwari, DR

Date of Hearing : 04/12/2017
Date of pronouncement : 26/02/2018

ORDER

PER N.K. PRADHAN, AM

These two cross appeals – one by the Revenue and the other by the assessee – for the assessment year 2012-13 are directed against the order of the Commissioner of Income Tax (Appeals)-30 [in short

'CIT(A)'], Mumbai. As some common issues are involved we are proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated, the facts of the case are that the Assessing Officer (AO) computed a disallowance of Rs.1,08,08,088/- u/s 14A r.w. Rule 8D of the Income Tax Rules 1962 (the 'Rules') comprising of Rs.64,07,125/- under Rule 8D(2)(i), Rs.286/- under Rule 8D(2)(ii) and Rs.44,00,677/- under Rule 8D(2)(iii).

As the appellant had already disallowed Rs.250/-, the AO restricted the addition to Rs.1,08,07,838/-.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) restricted the disallowance to Rs.3,66,380/- comprising of Rs.1,60,390/- under Rule 8D(2)(i), Rs.15/- under Rule 8D(2)(ii) and Rs.2,05,975/- under Rule 8D(2)(iii).

Both the Revenue and assessee are aggrieved by the order of the Ld. CIT(A) and have filed appeal before the Tribunal. The dispute here is the disallowance made by the AO and Ld. CIT(A) under Rule 8D(2)(i) and Rule 8D(2)(iii). We discuss below both the appeals together.

4. The grounds of appeal filed by the Revenue read as under:

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the expenses debited in P&L Account of the assessee concern has no direct nexus with the earning of exempt income, particularly when the dividend income was actually generated from shares held as stock-in-trade, thus clearly establishing that the expenses debited to P&L Account has direct nexus with the earning of exempt income as well as taxable income arising from shares?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in excluding PMS Management Fees, STT, Demat charges, Service Tax, charges relating to share trading and derivatives, legal and professional fees for advising portfolio of shares and other related services and custodian/transaction charges, while computing the disallowance of proportionate expenses under Rule 8D(2)(i) of the Income-tax Rules 1962, particularly when the most of the dividend income has arisen from shares held as stock-in-trade.?
 3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowance under Rule 8D(2)(iii) to 10% of the amount equivalent to one-half per cent of the average of the value of investment, when the Income-tax Rules have not given any such mandate for such a reduction arbitrarily.
5. The grounds of appeal filed by the assessee read as under:
1. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance u/s 14A amounting to Rs.3,66,380/-.
 2. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance u/s 14A read with Rule 8D(2)(i) amounting to Rs.1,60,390/-. The appellant submits that the disallowance is unjustified and is required to be deleted.
 3. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance u/s 14A read with Rule 8D(2)(iii) amounting to Rs.2,05,975/-. The appellant submits that the disallowance is unjustified and is required to be deleted.
 4. Both the lower authorities failed to consider that the appellant held stock-in-trade, the income from which was fully chargeable to tax under the head "business income".
6. Before us, the Ld. DR submits that the dividend income was actually generated from the shares held as stock-in-trade. It is stated that the Ld. CIT(A) has wrongly restricted the disallowance under Rule

8D(2)(iii) to 10% of the amount equivalent to one-half percent of the average value of investment.

The Ld. DR submits that the order of the AO be restored.

7. On the other hand, the Ld. counsel of the assessee submits that no disallowance is warranted, in case shares were held as stock-in-trade as held in the order dated 14.09.2012 of the Tribunal in *DCIT v. India Advantage Securities Ltd.* (ITA No. 6711/Mum/2011) which later on was confirmed by the Hon'ble Bombay High Court by way of non-admission of Revenue's appeal reported in 79 taxmann.com 370. The Ld. counsel also files a copy of the order of the ITAT 'E' Bench, Mumbai in assessee's own case for the AY 2011-12 in ITA No. 4492/Mum/2015.

8. We have heard the rival submissions and perused the relevant materials on record. We begin with the disallowance of Rs.64,07,125/- made by the AO under Rule 8D(2)(i) which later on was restricted to Rs.1,60,390/- by the Ld. CIT(A). The said Rule specifically mentions "the amount of expenditure directly relating to income which does not form part of total income". We find that the calculations made by the AO as well as the Ld. CIT(A) do not conform to the basic parameter of the above Rule. We further find that the entire expenditure incurred by the assessee pertains to purchase and sale of shares, bonds, debentures etc. The entire expenditure debited to the profit and loss account has been incurred for the purpose of conducting trading in shares, securities, bonds etc. The expenses disallowed by the AO were not directly concerned with earning dividend income of the assessee. These expenses were directly concerned with the business of purchase and sale of shares, which business income is fully taxed by the AO.

Therefore, we delete the disallowance under Rule 8D(2)(i) made both by the AO and the Ld. CIT(A).

The next issue is disallowance of Rs.44,00,677/- made by the AO under Rule 8D(2)(iii) which later on was restricted to Rs.2,05,975/-. We find that the appellant has earned dividend income of Rs.63,72,737/- Also we find that as per the balance sheet as at March 31, 2012 the stock-in-trade was Rs.712,315,219/- as against Rs.1,047,955,740/- as at March 31, 2011. The investment as at March 31, 2012 was Rs.100,033.46/-.

We find that no disallowance u/s 14A is called for in a case where the shares are held as stock-in-trade as held in *India Advantage Securities Ltd.* (supra), *CCI Ltd. v. JCIT* (2012) 20 taxmann.com 196 (Karn.), *PCIT v. State Bank of Patiala* (2017) 78 taxmann.com 3 (P& H) and *CIT v. G.K.K. Capital Markets (P.) Ltd.* (2017) 78 taxmann.com 341 (Cal.).

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

In *Godrej & Boyce Mfg. Co. Ltd. vs. Dy. CIT* (2010) 194 Taxman 203 (Bom.) the Hon'ble Bombay High Court has explained 8D(2)(iii) 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.”

In view of the above judicial pronouncements, we direct the AO to exclude stock-in-trade by way of shares and then compute the disallowance under Rule 8D(2)(iii).

9. In the result, the appeal filed by the Revenue and the assessee are partly allowed.

Order pronounced in the open Court on 26/02/2018.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 26/02/2018

Rahul Sharma. Sr. P.S.

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