

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL*  
*KOLKATA BENCH “A” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1126/Kol/2017**  
Assessment Year: 2012-13

M/s Anushreya Investments Pvt. Ltd., 18,British India Street, 1 <sup>st</sup> Floor, Room No105, Kolkaa-69 [ <b>PAN No.AACCCA 3658 B</b> ]	बनाम/ V/s.	Income Tax Officer, Ward-3(1), P-7, Chowringhee Square, Kolkta-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah,a FCA
प्रत्यर्थी की ओर से/By Respondent	Shri C.J Singh, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	29-01-2019
घोषणा की तारीख/Date of Pronouncement	13-02-2019

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-9, Kolkata’s order dated 15.03.2017 passed in case No.213/CIT(A)-9/Wd.3(1)/2016-17/Kol involving proceedings 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. The assessee’s sole substantive ground seeks to reverse both the lower authorities action making sec. 14 r.w.s. Rule 8D disallowance of ₹49,24,682/- comprising of demat charges, proportionate interest and administrative expenditure of ₹1,43,005/-, ₹43,53,951/- & ₹4,27,726/-; respectively. Learned counsel’s first argument during the course of hearing is that both the lower authorities have erred in

law as well as on facts in applying the above disallowance provision in case of shares held as stock-in-law. We find no merit in assessee's instant argument as hon'ble apex court's recent decision in Maxopp Investment Lt. vs. CIT (2018) 402 ITR 640 (SC) has settled the law that sec. 14A r.w.s. Rule 8D disallowance applies even in an instance of shares held as stock-in-trade. The assessee fails in its former argument therefore.

3. Next comes equally significant aspect of computation of the impugned disallowance in case of share held as stock-in-trade. This Tribunal's co-ordinate bench's decision in Maruti Traders & Investors vs. ACIT in **ITA No.846/Kol/2017** dated on 28.11.2018 holds that the impugned disallowance has to be computed in case of shares held as stock-in-trade in the following manner:-

*“Maruti Traders & Investors vs. ACIT-31, in I.T.A. No.846/Kol/2017, I.T.A. No.637/Kol/2018. In this the Ld ITAT held as follows:-*

‘2.3 We have heard the rival submissions. At the outset, we find from the audited accounts of the assessee, that the shares were held as stock in trade by the assessee and not as investments. Hence the computation mechanism provided in Rule 8D of the Rules cannot be applicable. We find that the ld AO though had not mentioned that the disallowance has been made in accordance with third limb of Rule 8D(2) of the Rules explicitly in is order, however, restored to take the computation mechanism provided therein at 0.5% of average value of investments. We hold that since Rule 8D of the Rules contemplates consideration of average value of investments only and not as stock in trade, the same cannot be adopted in the facts of the instant case, Now it is well settled by the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 (SC) that the disallowance u/s. 14A of the Act is to be made even if the shares are held as stock in trade. Since Rule 8D cannot be adopted herein, the disallowance should be made based on the accounts of the assessee.

2.3.1 We find that the Hon'ble Supreme Court in the case of cited supra in para 39 of the order had also observed that even though the dividend has been earned as an incidental activity in respect of shares held as stock in trade, it triggers the applicability of section 14A of the Act ad depending upon the facts of each case, the expenditure incurred in acquiring those shares and maintaining those shares would have to be apportioned between taxable and exempt income. the ld AR placed reliance on the decision of the co-ordinate bench of this Tribunal in the case of **DCIT vs. S.G. Investments & Industries Ltd** reported in 89 ITD 44 (Kol) dated 29.5.2003 wherein the ld Assessing Officer determined the sum of ₹19,14,940/- out of total interest paid of ₹3,69,36,638/- as interest relatable to earning of exempted dividend by working out the

percentage of dividend vis a vis total turnover during the year. The dividend earned in that case was ₹41,38,924/- which worked out to 5.2% of total earnings and accordingly proportionate interest debited in profit and loss account at the same percentage was disallowed u/s. 14A of the Act in that case. This action of the Id AO was upheld by this tribunal. The Id AR before us stated that the name of S.G. Investments & Industries ltd got changed to ISG Traders Ltd. We find that this Tribunal decision dated 29.5.2003 had been upheld by the Hon'ble jurisdictional High Court in the case of ISG Traders Lt vs. CIT in **ITA No.264 of 2003** dated 22.9.2011. Hence by respectfully following the said decision, we hold that the expenditure to be disallowed u/s. 14A of the Act is to be worked out in the similar fashion.”

4. Both the learned representatives are fair in enough at this stage that the Assessing Officer needs to finalize the consequential disallowance computation as per law. We therefore restore this computation issue back o the Assessing Officer to be finalized after affording adequate opportunity of hearing to the assessee.

5. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in open court on 13/02/2019

Sd/-

(लेखा सदस्य)

(J.Sudhakar Reddy)

Accountant Member

\*Dkp-Sr.PS

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

Judicial Member

दिनांक:- 13/02/2019 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s Anushreya Investments Pvt. Ltd., 18, British India Street  
1<sup>st</sup> Floor, R.No.105, Kolkata-69
2. प्रत्यर्थी/Respondent-ITO Wd-3(1), P-7, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, कोलकाता ।