

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “ए” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “A”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI S.S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA Nos.1282 & 1283/PUN/2017

निर्धारण वर्ष / Assessment years : 2012-13 & 2013-14

Orbit Electricals Pvt. Limited,  
Plot No.5, Harmony Complex,  
ICS Colony, Ganeshkhind Road,  
Pune – 411 007.

..... अपीलार्थी /  
Appellant

PAN : AAACF2636C.

बनाम v/s

The Dy. Commissioner of Income Tax,  
Circle – 3, Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Nikhil Pathak.

Revenue by : Shri Abhijit Haldar

सुनवाई की तारीख / Date of Hearing : 18.10.2019	घोषणा की तारीख / Date of Pronouncement: 19.11.2019
---	---

आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. The two appeals filed by the assessee are emanating out of the separate orders of Commissioner of Income Tax (A) – 3, Pune dt.09.01.2017 for the assessment years 2012-13 and 2013-14, respectively.
2. First we take up assessee’s appeal in ITA No.1282/PUN/2017 for A.Y. 2012-13.
3. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of share trading. Assessee filed its return of income for A.Y. 2012-13 on 28.09.2012 declaring total income of Rs.1,73,47,788/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 23.03.2015 and the total income was determined at Rs.2,32,42,729/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 09.01.2017 (in appeal No.PN/CIT(A)-3/Cir-3, Pn/45/2015-16) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

*“1. The learned CIT(A) erred in confirming the disallowance u/s 14A of Rs.38,95,049/- out of the total disallowance of Rs.58,92,941/- made by the learned AO.*

*2. The learned CIT(A) failed to appreciate that no disallowance u/s 14A r.w.r. 8D was warranted over and above, the disallowance of Rs.50,000/- already made by the appellant company in its return of income particularly, since no objective satisfaction was recorded by the learned A.O. to demonstrate that the disallowance made by the appellant was not correct.*

*3. The learned CIT(A) erred in confirming the disallowance of Rs.44,204/- u/s 14A r.w.r. 8D(2)(ii) in respect of proportionate interest expenditure incurred for earning tax free income without appreciating that the appellant had own funds available in excess of the tax free investments and therefore, there was no reason to make any disallowance.*

*4. The learned CIT(A) erred in partly confirming the disallowance on account of indirect expenditure u/s 14A r.w.r. 8D without appreciating that no objective satisfaction was recorded by the A.O. to demonstrate that the disallowance of Rs.50,000/- already made by the appellant in its return was not correct.*

*5. The learned CIT(A) failed to appreciate that the appellant had itself disallowed Rs.50,000/- on account of indirect expenditure in its return which was sufficient to cover any indirect expenditure incurred, if any, for earning exempt income and therefore, no disallowance over and above, the amount disallowed by the appellant was warranted under Section 14A r.w.r. 8D (2)(iii).*

*6. Without prejudice, the appellant submits that the learned CIT(A) erred in not appreciating that the disallowance u/s 14A r.w.r. 8D should have been limited to the investments on which tax free income was earned during the relevant year and the investments on which no tax free income was earned in the relevant year should have been excluded while computing the disallowance u/s 14A r.w.r. 8D.*

*7. The appellant further submits that the investments in group concerns should be excluded while determining the disallowance u/s 14A r.w.r. 8D.*

*8. Without prejudice to the above grounds, the assessee submits that the disallowance made u/s 14A is very high and may be reduced substantially.”*

4. Before us, at the outset, Ld.A.R. submitted that he does not wish to press ground No.s 2 and 4. Ld.A.R. further submitted that the remaining grounds for adjudication are inter-connected and are with respect to disallowance u/s 14A of the Act. In view of the submission of Ld.A.R., the **ground Nos.2 and 4 are dismissed as not pressed** and the other grounds being inter-connected are considered together.

5. During the course of assessment proceedings AO noticed that assessee had earned exempt income of Rs.11,23,97,581/- and had huge investments in the form of shares in various companies. He also noticed that though the provisions of Sec.14A r.w. 8D of I.T. Rules were applicable to the year under consideration but assessee had made disallowance of Rs.50,000/- u/s 14A of the Act. The assessee was therefore asked to explain as to why the disallowance not be made as per Sec.14A r.w. 8D of I.T. Rules, to which assessee submitted that since assessee had suo moto disallowed Rs.50,000/-, the disallowance as per Rule 8D is not warranted. The submissions made by the assessee were not found acceptable to the AO. He thereafter worked out the disallowance u/s 14A of the Act as per the methodology prescribed under Rule 8D of the I.T. Rules and worked out the disallowance at Rs.59,42,941/-. He thereafter granted credit of Rs.50,000/- which was suo moto disallowed by the assessee and made net addition of Rs.58,92,941/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A). Before Ld.CIT(A), apart from other contentions it was further contended that AO had made the disallowance by also considering the investments in shares

and mutual funds, the income from which was taxable and therefore should have been excluded while working out the disallowance Ld.CIT(A) after considering the submissions of assessee, granted partial relief to the assessee by directing the AO to compute the disallowance u/s 14A r.w. Rule 8D of I.T. Rules after excluding the investments in mutual funds, the income from which is taxable, and thus given relief of Rs.20,47,892/- and confirmed the addition to the extent of Rs.38,95,049/-.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

6. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that with respect to disallowance of interest expenditure under Rule 8D(2)(ii) submitted that the availability of interest free funds in the form of Share Capital and Free Reserves are much more than the investments and therefore, no disallowance of interest expenditure is called for. In support of his contention, he pointed to the copy of the audited Balance-Sheet which is placed at Page 14 of the Paper Book and from there he pointed to the fact of the Share Capital, Reserves and Surplus to be in excess of Rs.181 crore as against the investments of Rs.131.59 crore which has considered by the AO. Ld.A.R. also relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., reported in (2014) 366 ITR 505 wherein it was held that when the own funds are more than the investments, then no disallowance of interest u/s 14A of the Act is called for. Relying on the aforesaid decision, he submitted that no disallowance of interest under Rule 8D(2)(ii) of I.T. Rules is called for in the present case.

7. With respect to disallowance of indirect expenses under Rule 8D(2)(iii) of I.T. Rules, Ld.A.R. submitted that the AO has considered

all the investments irrespective of the fact that whether the assessee has earned dividend / tax free income on those investments or not. He submitted that only those investments from which assessee has earned exempt income should be considered while working out the disallowance u/s 14A of the Act and in support of the aforesaid contention he placed reliance on the decision of Special Bench of the Tribunal in the case of ACIT Vs Vireet Investments Pvt. Limited reported in (2017) 165 ITD 27 (Del) (SB). He further submitted that Pune Benches of the Tribunal in the case of M/s. Quick Heal Technologies Vs. DCIT reported in ITA Nos.1500 & 1710/PUN/2017 dated 12.03.2019 and in the case of Bharat Forge Ltd., Vs. DCIT in ITA No.805/PUN/2017 order dated 04.09.2019 relying on the Special Bench decision of Vireet Investments (supra) has held that the disallowance should be worked out only on those investments from which assessee has earned tax free income. He placed on record the copy of the aforesaid decisions. He also placed on record the copies of Break-up of Investments which are placed at Pages 1 and 2 of the Paper Book which shows the amounts received from various companies as tax free dividends. He therefore submitted that in view of these facts, the matter may be remitted back to the file of AO to work out the disallowance accordingly. Ld. D.R. on the other hand supported the order of lower authorities.

8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance u/s 14A r.w. 8D of I.T Rules. We find that AO has proceeded to make the disallowance of expenditure u/s 14A r.w. Rule 8D of I.T. Rules. Before us, it is assessee's contention that since assessee has sufficient interest free funds in the form of Share Capital, Reserves & Surplus which are more

than the investments, no disallowance of interest under Rule 8D(2)(ii) is called for. We find force in the submission of the Ld.A.R. We find that Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., (2014) 160 DTR 140 has held that if the assessee has interest free funds which are more than the investments, then there is a presumption that interest free funds have been utilized for making investments and no disallowance of interest under Rule 8D(2)(ii) is called for. The perusal of the audited Balance-Sheet of the assessee for year ending 31<sup>st</sup> March, 2012 which is placed in Paper Book reveals that the availability of interest free funds in the form of Share Capital, Reserves and Surplus as on 31.03.2012 is in excess of Rs.181 crore as against the closing investments considered by the AO at Rs.131 crore meaning thereby that the availability of interest free funds to be more than the investments. We therefore relying on the aforesaid decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., (supra) hold that no disallowance of interest expenses u/s 14A r.w. Rule 8D(2)(ii) of I.T. Rules is called for in the present case.

9. As far as the disallowance of indirect expenses u/s 14A r.w. 8D(2)(iii) of I.T. Rules is concerned, it is assessee's contention that AO, for working out the disallowance, has also considered those investments from on which assessee had not earned any exempt income and has also placed on record the statement showing the investments and tax free income earned from the investments. We find that the Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investments (P) Ltd., (supra) has held that only those investments are to be considered while computing the average value of the investments which yield exempt income during the year for working out disallowance u/s 14A r.w. Rule 8D. The aforesaid decision of the Special Bench of the Tribunal has also been relied upon by

the Co-ordinate Bench of the Tribunal in the case of M/s. Quick Heal Technologies Ltd (supra). Before us, Revenue has not placed any contrary binding decision in its support. We therefore relying on the aforesaid decision of Special Bench of Tribunal in the case of M/s. Quick Heal Technologies (supra) restore the issue back to the file of AO to re-work the disallowance u/s 14A r.w. Rule 8D(2)(iii) of I.T. Rules in line with the decision of Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investments Pvt Ltd. (supra). Assessee is also directed to file all the required details as called for by the AO. **Thus, the grounds of assessee are allowed for statistical purposes.**

10. **In the result, the appeal of assessee is partly allowed.**

11. Now we take up assessee's appeal in ITA No.1283/PUN/2017 for A.Y. 2013-14.

11.1. AO noticed that assessee had earned dividend income to the extent of Rs.11,64,13,033/- and had suo moto disallowed Rs.50,000/- u/s 14A of the Act. The assessee was asked to show cause as to why the disallowance u/s 14A r.w.r. 8D has not been made, to which assessee made the submissions which were not found acceptable to the AO. AO thereafter worked out the disallowance u/s 14A on the basis of Rule 8D of I.T. Rules at Rs.75,92,184/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 09.01.2017 (in appeal No.PN/CIT(A)-3/Cir.3, Pn/4/2016-17) granted partial relief to the assessee by directing the AO to work-out the disallowance u/s 14A r.w.r 8D by excluding the investments in mutual funds, the income from which were taxable in the hands of the assessee. Aggrieved by the order of

Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

*“1. The learned CIT(A) erred in not deleting the entire disallowance made by the learned AO of Rs.75,92,184/- u/s 14A r.w.r 8D.*

*2. The learned CIT(A) failed to appreciate that no disallowance u/s 14A r.w.r. 8D was warranted over and above, the disallowance of Rs.50,000/- already made by the appellant company in its return of income particularly, since no objective satisfaction was recorded by the learned A.O. to demonstrate that the disallowance made by the appellant was not correct.*

*3. The learned CIT(A) failed to appreciate that the appellant had itself disallowed Rs.50,000/- on account of indirect expenditure in its return which was sufficient to cover any indirect expenditure incurred, if any, for earning exempt income and therefore, no disallowance over and above, the amount disallowed by the appellant was warranted under Section 14A r.w.r. 8D (2)(iii).*

*4. The learned CIT(A) further erred in not accepting the claim of the appellant that no disallowance u/s 14A was warranted in respect of shares which are treated as stock-in-trade by the appellant in its books and it is submitted that no disallowance can be made in respect of the shares held as stock-in-trade.*

*5. Without prejudice, the appellant submits that the learned CIT(A) erred in not appreciating that the disallowance u/s 14A r.w.r. 8D should have been limited to the investments on which tax free income was earned during the relevant year and the investments on which no tax free income was earned in the relevant year should have been excluded while computing the disallowance u/s 14A r.w.r. 8D.*

*6. The appellant further submits that the investments in group concerns should be excluded while determining the disallowance u/s 14A r.w.r. 8D.*

*7. Without prejudice to the above grounds, the assessee submits that the disallowance made u/s 14A is very high and may be reduced substantially.”*

12. Before us, at the outset, Ld.A.R. submitted that ground No.1 being general in nature, requires no adjudication and that he does not wish to press ground No.s 2 and 3. Ld.A.R. further submitted that the remaining grounds for adjudication are inter-connected. In view of the submission of Ld.A.R., **ground No.1 is dismissed being general in nature, the ground Nos.2 and 3 are dismissed as not pressed**, and the other grounds being inter-connected are considered together.

13. Ld.A.R. submitted that the issue in A.Y. 2013-14 is similar to A.Y. 2012-13 to the extent of disallowance under 8D(2)(ii) and 8D(2)(iii) of I.T Rules. He submitted that the additional issue in the impugned year which is also required to be adjudicated is assessee has shares of Rs.30.10 crore which are held by it as stock-in-trade. He submitted that while working out the disallowance u/s 14A of the Act, AO has also included the aforesaid shares for working out the disallowance. He submitted that since the shares are held as stock-in-trade, it needs to be excluded for working out the disallowance u/s 14A and in support of which he relied on the decision in the case of Pune Tribunal in the case of Bank of Maharashtra Vs. DCIT which is placed at Page 33 of the Paper Book. He therefore submitted that in view of the aforesaid decision, the matter be remitted back to the file of AO. Ld. D.R. on the other hand supported the order of AO and Ld.CIT(A) and relying on the decision of Apex Court in the case of Maxopp Investment (2018) 402 ITR 640 supported the action of lower authorities.

14. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance u/s 14A r.w. 8D of IT Rules. As far as the issue of disallowance u/s 14A r.w Rule 8D(2)(ii) on account of interest expenses on account of availability of sufficient interest free funds and Rule 8D(2)(iii) with respect to indirect expenses from the investments from which no exempt income being earned respectively is concerned, in view of the submission of both the parties and the fact being similar to A.Y. 2012-13, we for the reasons stated hereinabove while deciding the issue in A.Y. 2012-13 and for similar reasons and directions, restore the issue back to the file of AO to recomputed the disallowance.

As far as the assessee's contention of excluding the investments which are held as stock-in-trade for working out the disallowance u/s 14A r.w. 8D of IT Rules is concerned, we do not agree with the contention of assessee in view of the fact that Hon'ble Apex Court in the case of Maxopp Investments Ltd., Vs. CIT reported in 2018 402 ITR 640 (SC) and after considering the decision of Hon'ble Punjab and Haryana High Court in the case of Prl.CIT Vs. State Bank of Patiala reported in 391 ITR 218 (P&H) has held that whether the shares are held as stock-in-trade or to maintain controlling interest in company, on earning dividend which is exempt u/s 10(34), the applicability of Sec.14A triggers and therefore depending on the facts of each case, expenditure incurred in acquiring those shares will have to be apportioned. The relevant observations of the Hon'ble Apex Court read as under :

*"4. However, in these appeals, the question has arisen under varied circumstances where the shares/stocks were purchased of a company for the purpose of gaining control over the said company or as 'stock-in-trade'. However, incidentally income was also generated in the form of dividends as well. On this basis, the assessees contend that the dominant intention for purchasing the share was not to earn dividends income but control of the business in the company in which shares were invested or for the purpose of trading in the shares as a business activity etc. In this backdrop, the issue is as to whether the expenditure incurred can be treated as expenditure 'in relation to income' i.e. dividend income which does not form part of the total income. To put it differently, is the dominant or main object would be a relevant consideration in determining as to whether expenditure incurred is 'in relation to' the dividend income. In most of the appeals, including in Civil Appeal Nos. 104-109 of 2015, aforesaid is the scenario. Though, in some other cases, there may be little difference in fact situation. However, all these cases pertain to dividend income, whether it was for the purpose of investment in order to retain controlling interest in a company or in group of companies or the dominant purpose was to have it as stock-in-trade.*

.....

.....

*33. There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. We have two scenarios in these sets of*

*appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assessee as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.*

.....

.....

*38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessee as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.*

*39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.*

*40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well*

*and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.”*

In view of the aforesaid decision of Hon'ble Apex Court in the case of Maxopp Investment Ltd., Vs. CIT (supra), we do not find any reason to interfere with the order of Ld.CIT(A) as far as the disallowance of expenditure u/s 14A r.w. Rule 8D(2)(iii) by considering the shares held as stock-in-trade for working out the disallowance is concerned. However before us, none of the parties have placed any material on record to demonstrate the exempt income earned u/s 10(34) of the Act by the assessee from the shares which are held as “stock-in-trade”. In such a situation, since on the other aspect of Sec.14A of the Act, we are restoring the issue to the file of AO for determining the disallowance, on this aspect also (where the shares are held as stock-in-trade), the issue is restored to the file of AO to decide it in the line of the aforesaid decision of Hon'ble Apex Court in the case of Maxopp Investments (supra). **Thus, the grounds of the assessee are partly allowed.**

**15. In the result, both the appeals of assessee are partly allowed for statistical purposes.**

Order pronounced on 19<sup>th</sup> day of November, 2019.

**Sd/-**

**(S.S. VISWANETHRA RAVI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 19<sup>th</sup> November, 2019.

Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Pune.
4. Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,  
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

//True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.