

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2123 & 2124/Del/2015  
(Assessment Year: 2009-10 and 2010-11)

M/s. PNB Housing Finance Ltd, 9 <sup>th</sup> Floor, Antariksh Bhawan, 22, KG Marg, New Delhi PAN: AAACP3682N	Vs.	ACIT, Circle-14(1), New Delhi
(Appellant)		(Respondent)

ITA No. 2810/Del/2015  
(Assessment Year: 2010-11)

DCIT, Circle-19(1), New Delhi	Vs.	M/s. PNB Housing Finance Ltd, 9 <sup>th</sup> Floor, Antariksh Bhawan, 22, KG Marg, New Delhi PAN: AAACP3682N
(Appellant)		(Respondent)

Revenue by :	Smt Sulekha Verma, CIT DR
Assessee by:	Shri S Krishna, CA Shri V Raja Kumar, Adv
Date of Hearing	09/09/2019
Date of pronouncement	04/12/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the appeals filed by the assessee and revenue against the order of the ld CIT(A)-7, New Delhi dated 28.01.2015 for the Assessment Year 2009-10 and dated 05.02.2015 for Assessment Year 2010-11.
2. ITA No. 2123/Del/2015 is filed by the assessee raising the solitary ground of appeal against the order of the ld CIT(A) stating that sustaining the disallowance @10% of the dividend u/s 40A of the Act amounting to Rs. 674630/- is unwarranted.
3. The brief facts shows that the assessee filed its return of income on 30.09.2009 declaring total income of Rs. 70.48 crores assessed u/s 143(3) of the Act at Rs. 71.99 crores per order dated 29.12.2011 wherein disallowance u/s 14A of Rs. 674630/- was made amongst other

disallowance. The issue was agitated before the Id CIT(A) who upheld the same.

4. The case of the appellant is that all the scripts of investments are held by it as stock in trade, therefore, no disallowance u/s 14A can be made.
5. The Id Departmental Representative submitted that provisions of section 14A will apply even if the assessee has shown the investment generating exempt income as stock in trade.
6. We have carefully considered the rival contention and find that assessee is a housing finance company. It has received exempt income of Rs. 6746308/- but assessee has not disallowed any sum u/s 14A of the Act. Therefore, the Id Assessing Officer issued so cause notice which was replied by the assessee that dividend income is a tax paid income tax paid by the mutual funds u/s 115O of the Act. It was further stated that opening and closing balance of mutual fund is Nil and therefore, there cannot be any expenditure disallowable as the average investment is Nil. AO held that assessee has common consolidated accounts for earning tax free and exempt income. He further held that in absence of separate account the claim of the assessee that it has not incurred any expenditure for earning exempt income is not acceptable. AO further rejected the contention of the assessee that if tax is withheld u/s 115O, section 14A does not apply. He accepted that since assessee has no opening or closing balance of investments disallowance as per Rule 8D cannot be made. He disallowed 10% of the dividend receipt u/s 14A of the Act.
7. Id CIT(A) also upheld the same despite the fact it was submitted that investments are held by assessee as stock in trade. In the present case the issue is squarely covered by the decision of the Hon'ble Supreme Court in Maxoop Investment Ltd Vs. CIT 402 ITR 640 wherein, in para No. 40 the Hon'ble Supreme Court has dealt with the same issue. It has been held that when the share are held as stock in trade, it becomes the business activity of the assessee. Whether the dividend earned or not is immaterial. It would be 'quirk of fate' if the dividend is received. The Hon'ble Supreme Court thus held that in such cases there cannot be any disallowance u/s 14A of the Act. Thus, the fact is not denied that assessee is holding exempt income generating investment as stock in trade, the disallowance made by the Id

Assessing Officer and confirmed by the 1d CIT(A) is not sustainable. Accordingly, we direct the 1d Assessing Officer to delete the disallowance of Rs. 674630/- u/s 14A of the Act.

8. Appeal of the assessee in ITA No. 2123/Del/2015 is allowed.
9. Now we come to the appeal for AY 2010-11
10. ITA No. 2124/Del/2015 is filed by the assessee challenging the disallowance u/s 14A of the Act made by the 1d Assessing Officer considering that 10% of the dividend income is disallowable u/s 14A of the Act which is confirmed by the 1d CIT(A).
11. The issue involved in this appeal is identical to the issue decided by us in ITA No. 2123/Del/2015 for AY 2009-10. In that year we have held that as the assessee has held tax free income generating investment as stock in trade no disallowance u/s 14A can be made. The facts in the present case are identical exempt to the extent to the amount disallowable. Therefore, for those reasons, for this year also we direct the 1d AO to delete the disallowance u/s 14A of the Act. Accordingly, ITA No. 2124/Del/2015 filed by the assessee is allowed.
12. Now we come to the ITA No. 2810/Del/2015 filed by the revenue.
13. The first ground of appeal is against the deletion of deduction disallowed by the 1d Assessing Officer of Rs. 12072496/- u/s 36(1)(viii) of the Act.
14. The brief facts of the case is that assessee has claimed deduction of Rs. 11 crores u/s 36(1)(viii) of the Act the 1d Assessing Officer out of that allowed only Rs. 97927504/- applying proportion of receipt total business income of the assessee in the granted deduction on account of interest on long term housing loan to the total income of the assessee. In the case of the assessee interest on long term housing loan is 55.89% compared to total receipt of the assessee. Thus, he held that 48.96 crores is profit from long term housing loan business. He granted deduction of 20% thereon. The assessee aggrieved preferred before the 1d CIT(A) who allowed the claim of the assessee relying on the decision of the CIT(A) in earlier years he deleted the disallowance. Therefore, the revenue is in appeal.
15. The 1d Departmental Representative vehemently supported the order of the 1d Assessing Officer.

16. We have carefully considered the rival contentions. The appellant is a subsidiary of Punjab National Bank and is engaged in the business of retail lending and also offers long term finance for construction of homes. The assessee the business income of Rs. 876230348/- before deduction u/s 36(1)(viii) of the Act. Subsequently, assessee claimed deduction stating that Rs. 2817156893/- was on account of total interest on housing loans and out of it Rs. 1767869838/- was on account of interest on long term housing loan. Thus assessee stated that 62.75% in on account of interest on long term housing loan and worked out applying that percentage on the total business income calculated a sum of Rs. 549834543/- pertaining to long term housing loan and computed deduction @20% of Rs. 10.99 crores as deduction. The Id Assessing Officer changed the above ratio from 62.75 % to 55.89% as he considered the total receipt of business for the purpose of working out proportion. In the present case the methodology adopted by the assessee is consistently followed for last eight years. Same was accepted by the revenue without any objection. The only issue is with respect to how the profit of the business for the purpose of long term housing finance shall be worked out. The only issue is that assessee is computed with respect to the total income with respect to the interest income whereas the Id AO has applied the above ratio to the total receipt. When the method has been consistently accepted for the above year we do not find any reason to defer from that. In view of this we do not find any infirmity in allowing the assessee claim of deduction u/s 36(1)(viii) of the Act applying the ratio of 62.75%. In the result we do not find any merit in ground No. 1 of the appeal. Hence, it is dismissed.
17. Ground No. 2 of the appeal is with respect to deduction u/s 14A. The assessee has earned exempt income of Rs. 32671197/-. The assessee did not make any disallowance u/s 14A of the Act. Assessee did not file any explanation on expenses attributable to exempt income. AO applied Rule 8D and disallowed Rs. 308685370/- u/s 14A. The Id CIT(A) deleted the disallowance as per Rule 8D but retained 10% of such disallowance. He further held that the AO has not discussed the matter at all and no relationship has been shown between the exempt income and expenditure incurred. Thus, it is apparent that the Id Assessing Officer has not recorded

any satisfaction with respect to the expenditure incurred in relation to exempt income. Therefore, on this account the disallowance cannot be made by the Id Assessing Officer under that section without recording satisfaction that assessee has incurred some expenditure in relation to exempt income. Further as held by us in appeal of the revenue for AY 2009-10 that assessee is holding these investments as stock in trade no disallowance can be made. For the reasons given by us in the appeal of the assessee wherein, we have directed to delete the disallowance, this ground of appeal of revenue is also deserves to be dismissed. Accordingly, ground No. 2 of the appeal is dismissed.

18. In the result appeal of the revenue in ITA No. 2810/Del/21015 is dismissed. Order pronounced in the open court on 04/12/2019.

-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 04/12/2019

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi