

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6330/Del/2017
(ASSESSMENT YEAR 2013-14)**

M/s Religare Securities Ltd., PAN:AAACF 1952D (Now merged with Religare Enterprises Limited") PAN: AAACV 5888N 2 nd Floor, Tower-A, Prius Global, Plot No.11, A-3,4,5 Sector-125, Noidai-201 301 (U.P.)	Vs.	Dy. CIT, Circle-21(1), New Delhi.
(Appellant)		(Respondent)

**ITA No.6434/Del/2017
(ASSESSMENT YEAR 2013-14)**

Dy. CIT, Circle-21(1), New Delhi.	Vs.	M/s Religare Securities Ltd., PAN:AAACF 1952D (Now merged with Religare Enterprises Limited") PAN: AAACV 5888N 2 nd Floor, Tower-A, Prius Global, Plot No.11, A-3,4,5 Sector-125, Noidai-201 301 (U.P.)
(Appellant)		(Respondent)

Appellant By	Sh. Rohit Jain, Adv. & Ms. Tejasvi Jain, Adv.
Respondent by	Sh. Atigu Ahmed, Sr. DR
Date of Hearing	01.12.2020
Date of Pronouncement	25.02.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

ITA No.6330/Del/2017 is the assessee's appeal preferred against order dated 28.07.2017 passed by the Learned Commissioner of Income Tax (Appeals)-38, New Delhi {CIT (A)} for Assessment Year 2013-14 whereas ITA No. 6434/Del/2017 is the Cross Appeal by the Department for the same year.

2.0 The brief facts of the case are that the assessee company is a member of the Bombay Stock Exchange and National Stock Exchange and is engaged in the business of the providing broking and depository services to retail clients. The return of income was filed declaring an income of Rs. 2,72,15,81,980/-. Subsequently, the return of income was revised declaring income of Rs. 2,70,87,75,810/-. The case was selected for scrutiny and, thereafter, the assessment was completed at an income of Rs.

2,73,16,74,200/- after making additional disallowance of Rs. 1,93,79,583/- u/s 14A of the Income Tax Act, 1961 (hereinafter called 'the Act) and another disallowance of Rs.35,18,803/- being amount paid towards fines and penalties.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority who partly allowed the assessee's appeal by deleting Rs. 1,93,79,589/- being the additional disallowance made by the Assessing Officer (AO) u/s 14A of the Act. The Ld. CIT (A), however, upheld the disallowance pertaining to amount paid towards fines and penalties.

2.2 Now, aggrieved both the assessee as well as the Department is in appeal before the Tribunal and has raised the following grounds of appeal:

ITA No.6330/Del/2017

"1. That the Commissioner of Income Tax (Appeals) [“CIT (A)] erred on facts and in law in confirming the disallowance of Rs.35,18,803/- made by the Assessing Officer, being amount paid to the National Stock Exchange of India Limited (“NSE”) holding the same to be capital in nature.

1.1 That the CIT (A) erred on facts and in law in not appreciating that the aforesaid charges paid to NSE for delay in making certain timely compliances were not in the nature of fine and penalty for violation of law.

1.2 That the CIT (A) erred on facts and in law in not appreciating that the aforesaid charges levied by NSE in accordance with its internal bye laws were merely compensatory and not penal in nature.

The appellant craves leave to add, alter, amend or vary from the above grounds of appeal before or at the time of hearing.”

ITA No.6334/Del/2017

“1. That on facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.1,93,79,583/- made by the AO u/s 14A of the I.T. Act, 1961, as per the disallowance computed in Tax Audit Report.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance u/s 14A of Rs.1,93,79,583/- ignoring CBDT Circular No.5/2014 wherein it issued a clarification that Rule 8D read with section 14A of the Act provides for disallowance of

expenditure even where taxpayer in a particular year has not earned any exempt income.

3. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or mend any of the grounds of appeal.”*

3.0 At the outset, the Ld. Authorized Representative (AR) submitted that the assessee has filed an additional ground of appeal and requests admission of that additional ground in terms of Rule-11 of the Income Tax (Appellate Tribunal) Rules, 1963. He drew our attention to the additional grounds which read as under:

2.0 *“That the CIT (A) erred on facts and in law in upholding the disallowance under section 14A of the Income Tax Act, 1961 (“the Act”) to the extent of Rs.1,83,55,525/-.*

2.1 *That on the facts and circumstances of the case, no part of interest expenditure could be considered for the purpose of disallowance under section 14A of the Act, particularly considering that: (a) no part of interest on borrowed funds was incurred in relation to exempt income; and (b) interest income, in any case, far exceeded interest expenditure.*

2.2 *That on the facts and circumstances of the case and in law, the Assessing Officer/CIT(A) erred in not appreciating*

that the entire dividend of Rs.4,14,800/- was received as incidental income from the business of trading in shares and therefore, no disallowance under section 14A of the Act was called for.

2.3 Without prejudice, on facts and circumstances of the case and in law, disallowance under section 14A of the Act cannot exceed, in any case, exempt dividend income of Rs.4,14,800/- earned by the appellant during the relevant previous year.”

3.1 The Authorized Representative submitted that this ground is also related to the Department's ground which challenges the action of the Ld. CIT (A) in deleting the disallowance of Rs. 1,93,79,583/- made by the Assessing Officer u/s 14A of the Act. It was prayed that since this ground does not raise any new issue but relates to an issue which has already been deliberated upon both by the Assessing Officer as well as the Ld. CIT (A), the same should be admitted.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) has no objection to the additional ground being admitted.

5.0 Having heard both the parties on the issue of admission of additional ground, we deem it appropriate to admit this additional ground as this issue was already before the lower authorities and no fresh issue is being sought to be raised by this additional ground of appeal.

6.0 The Ld. Authorized Representative submitted that during the under consideration, the assessee had received dividend income of Rs. 4,14,800/- from equity shares held for trading purposes and the dividend was claimed as exempt u/s 10(34) of the Act. The Ld. Authorized Representative further submitted that the assessee had revised its return of income and had *suo moto* made a disallowance of Rs.1,83,55,525/- u/s 14A of the Act and, subsequently, the Assessing Officer proceeded to compute the disallowance at Rs.3,77,35,108/- thus, making an additional disallowance of Rs.1,93,79,583/- over and above the *suo moto* disallowance offered to tax by the assessee. The Ld. Authorized Representative further submitted that on appeal, the Ld. CIT (A) agreed with the contention of the assessee that disallowance u/s 14A cannot exceed the

exempt income but restricted the disallowance to the amount of the *suo moto* disallowance made by the assessee.

6.1 The Ld. Authorized Representative further submitted that subsequently the assessee was legally advised that the *suo moto* disallowance u/s 14A of the Act was not based on correct interpretation of the relevant provisions and the prevailing legal position. The Ld. Authorized Representative submitted that the assessee had erred in computing the *suo moto* disallowance u/s 14A and, therefore, the issue of disallowance u/s 14A needed to be examined afresh. It was submitted that the disallowance computed u/s 14A is incorrect since while computing the disallowance as per Rule 8D, investments not yielding dividend income have been considered by the Lower Authorities. It was submitted that the dividend income of Rs. 4,14,800/- earned during the year was not earned from any of the investments as appearing in the balance sheet but the same was earned as income incidental to trading in shares. It was submitted that it is settled law that while calculating average investments in Rule 8D (2)(ii)/(iii) only those investments which actually yielded tax exempt income should have been taken

into consideration. It was submitted that an identical issue was decided in faovur of the assessee by the order of the Tribunal in assessee's own case for Assessment Years 2008-09 & 2011-12, wherein the Tribunal directed the Assessing Officer to compute disallowance u/s 14A only *qua* the investments which have yielded exempt income.

7.0 The Ld. Sr. Departmental Representative (DR) submitted that the assessee should not be permitted to argue for re-computing the disallowance u/s 14A afresh at this stage, specially, when the assessee had himself disallowed an amount *suo moto* and, thereafter, the Ld. CIT (A) had already restricted the disallowance to the extent of *suo moto* disallowance made by the assessee.

8.0 On a query from the Bench, both the parties agreed that following the Orders of the Tribunal for Assessment Years 2008-09 and 2011-12 in assessee's own case, a similar direction may be given in this year also.

9.0 With respect to assessee's Ground Nos.1 to 1.2 challenging the disallowance of non-compliance charges paid to

National Stock Exchange (NSE) amounting to Rs. 35,18,803/-, it was submitted that during the year under consideration the assessee had incurred expenditure aggregating to Rs. 46,06,304/- disclosed under the head fines and penalties and the assessee had *suo moto* disallowed an amount of Rs.3 ,76,890/- being aggregate of sums paid to Authorities other than NSE, as not admissible for deduction. It was further submitted that the Assessing Officer, however, also disallowed the amount of Rs. 35,18,803/- being charges paid to NSE, u/s 37(1) of the Act. The Ld. Authorized Representative submitted the assessee is a member of the National Stock Exchange of India ('NSE') and is engaged in providing securities broking services to institutions and depositary services to retail clients. As a member of the NSE, the assessee is required to comply with the rules, regulations and bye-laws issued by the NSE for its members. Such rules, regulation and bye-laws can be considered as regulations for maintaining the general discipline of the exchange. It was submitted that in the event of delay in compliance/ total non-compliance of the bye-laws, NSE levies a fine on its members, which is purely routine and compensatory in

nature and does not amount to violation of any law. Our attention was drawn to a copy of the ledger account giving break-up of payment of Rs. 35,18,803 to NSE on various dates.

9.1 The Ld. AR submitted that the assessee had paid the aforesaid amount to NSE for following procedural non-compliances:

- (i) Penalty for Non Settlement of Dues levied by NSCCL, a wholly owned subsidiary of NSE;
- (ii) Penalty levied by the NSE for non- maintenance of complete KYC documents for few clients;
- (iii) Penalty for operation of trading terminal other than by the registered user;
- (iv) Penalty for funding client transactions;
- (v) Penalty for reporting of margins collected from clients in advance;
- (vi) Penalty for non-updation of CTCL details;

9.2 The Ld.AR submitted that all the aforesaid charged levied by NSE are of disciplinary nature being levied to ensure timely compliance of the by-laws of NSE and that the aforesaid

payments were not for violation of any law as prescribed in Explanation to section 37(1) of the Act. It was further submitted that NSE is a limited company formed under the provisions of the Companies Act, with an independent board and it is subject to the provisions of the Securities Contracts (Regulation) Act, and the Securities and Exchange Board of India Act, 1992. The Board of NSE has power for penalising disobedience or contravention of its rules, by-laws and regulations by its member. Though board of directors of NSE has nominees of the SEBI, but NSE is not a statutory body. It was also submitted that non-observation of internal regulations of stock exchange cannot be treated as violation of any statutory rule, so as to be disallowed under section 37(1) of the Act.

9.3 The Ld. Authorized Representative also submitted that an identical issue had been decided in favour of the assessee in the case of DCIT vs. VLS Finance Ltd. by the Delhi Tribunal and reported in 104 taxmann.com 294 (Delhi Tribunal). The Ld. Authorized Representative submitted that similar adjudications in favour of the assessee had also been done by the Chandigarh

Bench of the Tribunal and the Mumbai Bench of the Tribunal. The Ld. Authorized Representative also submitted that the Hon'ble Delhi High Court in the case of CIT vs. Prasad and Co., reported in 341 ITR 480 (Delhi) had held that fines paid for violating NSE rules was an allowable deduction as the amounts were paid during the course of business of the assessee and were not for infringement of any law.

10.0 In response, the Ld. Sr. Departmental Representative (DR) submitted that the impugned amount had been mentioned as disallowable even by the Tax Auditor of the company in the tax audit report but the assessee had not disallowed the same *suo moto* in the computation of taxable income. It was submitted that in view of the qualification made by the tax auditor, the amount was correctly disallowed by the Assessing Officer.

11.0 We have heard the rival contentions and have also perused the material on record. As far as the issue of disallowance of non-compliance charges amounting to Rs.35,18,803/- paid to National Stock Exchange is concerned, it is seen that the Ld. Authorized Representative has given a detailed break up and

description of the various amounts constituting the impugned total amount of Rs.35,18,803/- and has vehemently argued that these penalties and fines levied by National Stock Exchange were more in the nature of regulatory/disciplinary fees and were not in the nature of any penalty levied for violation of any law. However, the fact remains that the submissions regarding the actual nature of fines and penalties levied by NSE were not explained before the Lower Authorities. The fact also remains that in the tax audit report, the auditor, in his own wisdom, has stated that this amount was liable to be disallowed and added back to the income of the assessee. In our considered opinion, interest of substantive justice would be met if the assessee is allowed an opportunity to explain and establish before the Assessing Officer as to how these amounts do not fall within the mischief of section 37(1) of the Act. We, accordingly, restore this issue to the file of the Assessing Officer with a direction to examine the matter afresh after giving proper opportunity to the assessee to present its case. Thus, Ground Nos.1 to 1.2 stand allowed for statistical purposes.

11.1 As far as the assessee's additional ground is concerned which challenges the disallowance made u/s 14A of the Act, it is seen that in Assessment Year 2008-09 in ITA No.2282/Del/2013, vide order dated 13.12.2019, on the issue of disallowance u/s 14A of the Act, the Co-ordinate Bench of the Tribunal in Para 5.4 of the said order had considered the issue of disallowance and remitted the issue back to the file of the Assessing Officer to work out of the disallowance by calculating average investments under Rule 8D(2)(ii)/(iii) by taking only those investments which have actually yielded dividend income during the relevant year and also directed that if the same exceeded the dividend income then to restrict the same to the extent of exempt income only. Similarly, in Assessment Year 2011-12 in ITA Nos.230/Del/2017 and 574/Del/2017, vide order dated 31.07.2020, vide Para 18 of the said order, the issue of disallowance u/s 14A of the Act had again restored the issue to the file of the AO with the direction to ascertain the investment which have yielded dividend income and to consider only those investments for computing the average value of investments. Therefore, on identical facts and with consent of both the parties,

we deem it appropriate to restore this issue also to the file of the Assessing Officer with a direction to include only those investments which have yielded dividend income for computing the average value of investments for the purpose of computing the amount of disallowance u/s 14A of the Act. The Assessing Officer is directed to offer reasonable opportunity to the assessee to present its case before proceeding to re-compute the disallowance. Since this ground also relates to the ground raised in the Department's appeal, the Department's ground also stands restored to the file of the AO with similar directions. Thus, assessee's as well as department's grounds stand allowed for statistical purposes.

12.0 In the final result, the appeal of the assessee as well as the Department stand allowed for statistical purposes.

Order pronounced on 25th February, 2021.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 25/02/2021

PK/PS

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI