

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. MAHAVIR PRASAD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.781/Del/2018
Assessment Year: 2013-14

Punjab & Sind Bank HO. Accounts & Audit Department, 1st Floor, 21, Rajendra Place, New Delhi-110008 PAN No. AAACP1206G	Vs	ACIT Circle – 20 (1) New Delhi
		(RESPONDENT)

ITA No.1208/Del/2018
Assessment Year: 2013-14

ACIT Circle – 20 (1) New Delhi	Vs	Punjab & Sind Bank HO. Accounts & Audit Department, 1st Floor,21, Rajendra Place, New Delhi-110008 PAN No. AAACP1206G
		(RESPONDENT)

Appellant by	Sh. Vivek Gupta, CA
Respondent by	Ms. Sushma Singh, CIT DR Sh. Gourav Pundib, Sr. DR.

Date of hearing:	12/07/2021
Date of Pronouncement:	12/07/2021

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.781/Del/2018 and ITA 1208/Del/2018 are cross appeals by the assessee and revenue preferred against the order of the CIT(A)-7, New Delhi dated 05.12.2017 pertaining to A.Y. 2013-14.

2. Both these appeals were heard together and are being disposed of by this common order for the sake of convenience.

3. The grievance of the assessee read as under :-

1. *That on the facts and circumstances of the case and provisions of the law, the learned CIT(Appeal) has erred in sustaining the disallowance u/s 14A r.w.r. 8D of Rs.85,98,000/-, (i.e.14% of average investments against exempted income) in respect of exempted income of Rs.4,77,67,907/-.*
2. *That in light of the ground no.1 above, the learned CIT(Appeal) has erred in sustaining the addition of Rs.85,98,000/- to book profit under MAT (section 115JB) in respect of exempted income.*
3. *That on the facts & circumstances of the case and provisions of the law, the learned Assessing Officer has erred in not granting the TDS credit of Rs.2,06,817/-. The Id CIT(Appeal) has also erred in not fully appreciating and adjudicating this issue in light of our submissions made before him resulting into passing of non-speaking order which is against principle of natural justice.*

4. *That the appellants request be allowed to add, modify and delete any other ground (s) of appeal*

4. The grievance of the revenue read as under :-

1) On the facts and under the circumstances of the case, the Ld.CIT (A) erred in law and facts in deleting the addition of Rs. 17,63,07,641/- made by the AO in respect of depreciation on securities.

2) On the facts and under the circumstances of the case, the Ld.CIT (A) erred in law and facts in deleting disallowance of Rs. 1,87,35,15,770/- made by the AO out of contribution to P & S Bank employees Pension Fund Trust.

3) On the facts and under the circumstances of the case, the Ld.CIT(A) erred in law and facts in deleting the disallowance of Rs. 1277.85 lakhs made by the AO u/s 14A read with rule under rule 8D(2)(ii).

4) On the facts and under the circumstances of the case, the Ld.CIT (A) erred in law and facts in deleting the disallowance of Rs. 1,87,35,15,770/- made by the AO out of contribution to P & S Bank employees Pension Fund Trust while computing book profit u/s 115JB.

5) On the facts and under the circumstances of the case, the Ld.CIT(A) erred in law and facts in deleting the disallowance of Rs. 1277.85 lakhs made by the AO u/s 14A read with rule under rule 8D(2)(ii) while computing book profit u/s 115JB

6) The appellant craves to be allowed to add and alter any fresh ground(s) of appeal and/or delete or amend any of the ground (s) of appeal.

5. Representatives of both the sides were heard at length. Case record carefully perused.

6. Facts relating to ground No. 1 and 2 of assessee's appeal and ground No.3 of revenue's appeal are identical.

7. Identical issues were considered and decided by this Tribunal in assessee's own case in ITA Nos. 1441 and 1442 /Del/2015 for A.Y.2011-12 and 2012-13 vide order dated 09.01.2019. The relevant findings of the coordinate bench read as under :-

“23. We have carefully perused the decision in the case of Maxopp investment Ltd versus CIT (2018) 91 taxman.com 154 (SC) wherein the Hon'ble Apex Court considered two cases wherein the question of predominant intent of investment in shares was pleaded, though on different facts, on the ground that the objective of investing in shares was not to earn the dividend income, but to either retain controlling interest over the company in which the investment was made or to earn the profit from trading in shares. The question was whether the disallowance under section 14 A of the Act could be invoked in the cases where exempt income was earned from shares held as “trading assets” or “stock in trade”. The first case relates to Maxopp investment Ltd and the second case relates to the case of State Bank of Patiala. In the case of Maxopp investment Ltd the assessee company is in the business of finance, investment and was dealing in shares and securities; that they held the shares and securities, partly as investments on the “capital account” and partly as “trading assets” for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd.; and that the

profits resulting on the sale of shares held as trading assets were duly offered to tax as business income of the assessee. In the case of State Bank of Patiala the assessee has exempt income in the form of dividend was earned by the bank from securities held by as stock in trade. The Hon'ble Supreme Court was considering the question that has arisen under varied circumstances where the shares/stocks were purchased by a company for the purpose of gaining control over the said company or as "stock in trade", though incidentally income is also generated in the form of dividends as well.

24. It was argued before the Hon'ble Apex Court that though incidentally income was also generated in the form of dividends, the dominant intention for purchasing the shares was not to earn the dividend income but to acquire and retain the controlling business in the company in which shares were invested, or for the purpose of trading in the shares as business activity.

25. After considering the entire case law on this aspect in the light of the peculiar facts involved in both the matters, the Hon'ble Apex Court vide paragraph No. 39 and 40 held as follows:-

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."

26. It is, therefore, clear from the above observations of the Hon'ble Apex Court that depending upon the facts of each case, the expenditure incurred in acquiring the shares will have to be apportioned. Hon'ble Apex Court held that the tribunal and the Hon'ble High Court of Punjab and Haryana arrived at a correct conclusion by setting aside the disallowance under section 14 A of the Act in respect of the dividend earned on the shares held as stock in trade, because such shares were held during the business activity of the assessee and it is only by a quirk of fate that when the investee company declared dividend, those shares were held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits.

27. Hon'ble Apex Court made clear distinction of this case from the case of maxopp investment Ltd where the assessee knew that whenever dividend would be declared by the investee company such dividend would necessarily be earned by the assessee and assessee alone, and it would be in the common knowledge of the assessee that such shares would generate dividend income as well as and when such dividend income is generated that would be earned by the assessee only. Hon'ble Apex Court in unequivocal terms held that in contrast, where the shares are held as stock in trade, this may not be necessarily a situation and the main purpose

was to liquidate those shares whenever the share price goes up in order to earn profits. Hon'ble Apex Court, therefore, while rejecting the theory of dominant purpose in making investment in shares- whether it was to acquire and retain controlling interest in the other company or to make profits out of the trading activity in such shares - clearly made a clear distinction between the dividend earned in respect of the shares which were acquired by the assessee in their exercise to acquire and retain the controlling interest in the investee company, and the shares that were purchased for the purpose of liquidating those shares whenever the share price goes up, in order to earn profits. It is, therefore, clear that though not the dominant purpose of acquiring the shares is a relevant for the purpose of invoking the provisions under section 14 A of the Act, the shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with an intention to acquire and retain the controlling interest in the investee company.

28. We, therefore, while respectfully following the above decision do not find any illegality or irregularity in the Ld. CIT(A) deleting the addition made by the Ld. AO under rule 8D (2) (ii) of the Rules.”

8. This order of the Tribunal was appealed before the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi in ITA No.904/2019 and ITA No.906/2019 vide order dated 16.10.2019 dismissed the appeals of the revenue. The relevant findings of the Hon'ble High Court read as under :-

“5. Insofar as the disallowance of expenditure under Section 14A is concerned, the ITAT has relied upon the decision of the Supreme Court Maxopp Investment Ltd vs. CIT (2018), 402ITR 640 (SC). The decision of the Supreme Court reads as follows:

“48. 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 14-A 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.

49. We note from the facts in State Bank of Patiala case 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 8-D of the Rules and holding that Section 14-A 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 ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court.

50. *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.”*

6. *The Tribunal has held in favour of the respondent assessee that it had earned the revenue on the shares held as stock in trade only by a quirk of fate.*

7. *In the light of aforesaid concluded position, both on facts and in law, in our view, no question of law arises for consideration in the present appeal. Accordingly, present appeals stand dismissed.”*

9. As no distinguishing decision has been brought to our notice by the DR, respectfully following the decision of this Tribunal as

upheld by the Hon'ble High Court (supra) we direct the AO to delete the disallowance made u/s. 14A r.w.r. 8D of the Act. Accordingly the ground No.1 and 2 of assessee's appeal are allowed and ground No.3 of revenue's appeal is dismissed.

10. The other grievance of the assessee relates to the non-granting of the TDS credit. We find that the CIT(A) has issued appropriate directions. We accordingly direct the AO to allow the credit as per provisions of the law after verification.

11. Ground No.3 is allowed for statistical purpose.

12. Coming to the other grounds of revenue's appeal in ITA No.1208/Del/2018 ground No.1 relates to the deletion of the addition of Rs.176307641/- made by the AO in respect of depreciation on securities.

13. We find that an identical issue was considered by this Tribunal in assessee's own case in A.Y.2011-12 and 2012-13 (supra). The relevant findings of the Tribunal read as under :-

“8. We have perused the record and the case law relied upon by both the sides. It is an admitted fact that the assessee being a nationalized bank is governed by the Banking Regulation Act, 1949; that they are following mercantile system of accounting both for book keeping purpose as well as for tax purposes; that they have been valuing the stock-in-trade (investments) "at cost" in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment "at cost or market value, whichever is lower" for income tax purposes; that it is an established rule of commercial practice and accountancy that closing stock can be valued at cost or market price, whichever is lower. It could be seen from the record that the question as to the reflection of the investments being stock in trade in the audit report, profit and loss account and the annual report with the question of the value of securities as embedded in the closing stock and the corresponding figure as becoming the opening stock in the subsequent year was adverted to India judicial precedents.

9. Further, as understood from the argument of the Ld. DR, her contention is that no opening stock or closing stock of securities was mentioned in the profit and loss account though the assessee had claimed their investment in securities as stock in trade; and that if the investments are stock in trade, it should be reflected in the return of income, audit report, profit and loss account and the annual report and the diminution of the value of securities will be embedded in the closing stock and the corresponding figure will become the opening stock in the subsequent assessment years. On this she submitted that when once the assessee reduces the

depreciation and reaches a particular figure as the book value of the securities, then naturally when the securities were sold in the subsequent years the profit should be estimated with reference to the reduced value of the Scrip's in the earlier years, but however in the case of the assessee, cost of the security after reducing the same because of the depreciation was not changed or adjusted in the books resulting in the books reflecting the low profit and the resultant offering of less amount to tax.

10. Plea of the assessee, on the other hand, is that the treatment of the profit on sale of securities is two-fold. Firstly, the profit on sale of securities will be lower due to the nonattachment of cost of securities with deregulated appreciation claimed, but simultaneously at the second stage of the said transaction, claim of depreciation on securities for the year is also reduced to the extent of a community depreciation claimed earlier and resultantly the profit for the year is worked out correctly after taking into account both the folds of the transaction collectively.

11. On a careful consideration of the matter we are of the considered opinion that it is not the case of the Ld. Assessing officer that in this particular year in respect of any particular security such a thing had happened. It is not the case of the Ld. Assessing officer that with reference to any particular scrip there was depreciation and the loss was claimed in the earlier years as deduction but without showing the reduced value of the scrip as the opening value of the stock, on the sale of the scrip, the cost price but not the reduced price was taken as the cost of acquisition and thereby any less amount was offered to tax. The entire edifice of the case of revenue is based on the theoretical suspicion of the Ld. Assessing officer that in as much as the assessee has not been showing in the balance sheet reduced value of the scrip but the cost price of the scrip as the value of the scrip, when the securities were sold it is the cost price of the scrip

but not the reduced value of the scrip that was taken to estimate the profits and as a consequence of which the less amount has been offered to tax. It is a verifiable fact with reference to the sales of securities, if any, that took place during the year or earlier or subsequent years. Such an exercise has not been undertaken by the learned Assessing officer but merely basing on the figures reflected in the balance sheet which was prepared in accordance with the RBI guidelines, learned Assessing officer reached a conclusion that there was an escapement of income due to the preparation of the balance sheet in a particular way, as prescribed by the RBI.

12. If we appreciate the facts of this case in the light of the decision of the Hon'ble Apex Court in UCO Bank vs. CIT 240 ITR 355 (SC), it is clear that since the assessee has been maintaining its accounts on mercantile system, they are entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. All the aspects argued by the Ld. DR were considered by the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and were held in favour of the assessee. The decision in Southern Technologies Ltd (supra) has no application to the facts of the case.

13. There is consistency of the facts on this aspect quite for a long time and all possible arguments have come before the adjudicatory authorities. On a careful consideration of the matter in the light of the submissions on either side we are of the considered opinion that the question is now fully covered by the orders of the tribunal in assessee's own case for the earlier years, and while respectfully following the same, we hold the issue in favour of the assessee."

14. Respectfully following the decision of the coordinate bench (supra) ground No.1 is dismissed.

15. Ground No.2 relates to the deletion of the disallowance made by the AO out of contribution to Punjab and Sind Bank Employees Pension Fund Trust.

16. A similar grievance was considered by this Tribunal in A.Y.2011-12 and 2012-13 (supra). The relevant findings of the Tribunal read as under :-

“17. Ld. CIT(A) found that on similar issue in the Assessment year 2009-10, the issue was decided in of the assessee wherein it was held that similar expenses were allowed in the earlier assessments made under section 143(3) of the Act and the decision of Delhi ITAT in the case of DCIT vs Ranbaxy Laboratories Ltd (2009) 124 TTJ (Delhi) 771 wherein the expenses towards provision for pension fund were held to be allowable expenses and section 43B has no application, is applicable. The fact that the assessee had actually contributed/paid the amount to pension fund makes the case of the assessee even stronger. Following the above orders, Ld. CIT(A) held that the addition his score has to be deleted.

18. We do not find any difference in the facts of the case from their earlier years to render the binding precedents followed by the Ld. CIT(A) inapplicable to the case in hand. In the absence of any change of facts and circumstances, we find it difficult to take a

different view. In these circumstances, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal.”

17. Respectfully following the decision of the coordinate Bench ground No.2 is dismissed.

18. Ground No.4 and 5 taken together relates to the disallowances considered vide ground No.2 and 3 of revenue's appeal. Since the additions have been deleted grievance raised by vide ground No. 4 and 5 become otiose.

19. Similar treatment was given in A.Y.2011-12 and 2012-13 by this Tribunal and the findings read as under :-

“29. These grounds relate to the additions made by the learned AO in respect of the depreciation on securities, contribution to P&S Bank Employees Pension Fund Trust, and disallowance under section 14A of the Act, while computing the book profits under section 115 JB of the Act. In view of our finding in the preceding three grounds deleting the additions made on all these counts, these grounds do not survive and are dismissed.”

20. In the result, the appeal filed by the assessee is allowed and that of the revenue is dismissed.

21. Decision announced in the open court in the presence of both the representatives on 12.07.2021.

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

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

NEHA

Date:-12.07.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	12.07.2021
Date on which the typed draft is placed before the dictating Member	12.07.2021
Date on which the typed draft is placed before the Other member	12.07.2021
Date on which the approved draft comes to the Sr.PS/PS	12.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	12.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	12.07.2021
Date on which the final order is uploaded on the website of ITAT	12.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	