

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", MUMBAI**

BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT AND

SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER

**ITA No. 500/MUM/2018
Assessment Year: 2013-14**

IndusInd Bank Ltd., 8 th Floor, Tower One, One Indiabulls Centre, 841, Senapati Bapat Marg, Elphinstone Road-West, Mumbai - 400013 PAN: AAACI1314G	Vs.	Asst. Commissioner of Income Tax- Range 2(3)(2), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Viksit Bhargava (AR)

Revenue by : Shri Vijay Kumar Subramaniam (Sr. DR)

Date of Hearing : 19/07/2021
Date of Pronouncement: 11/08/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against order dated 06.11.2017 of learned Commissioner of Income Tax (Appeals)-6, Mumbai for the assessment year 2013-14.

2. Before we proceed to deal with the issue arising in this appeal, it is necessary to observe, this appeal was earlier disposed of by the Tribunal along with revenue's appeal in ITA No. 667/Mum/2018 vide a common order dated 24.07.2019. Since, ground no. 2 in assessee's appeal remained undecided, the assessee filed a miscellaneous application for rectification/recall of the appeal order. Allowing assessee's miscellaneous application, the appeal order was recalled for the limited purpose of deciding ground no. 2. This is how the appeal came up for hearing before us.

3. The ground no. 2 reads as under:-

“2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not appreciating the fact that it was only by virtue of investments in the securities held as stock-in-trade that the dividend had accrued to your Appellant and it was settled law that provisions of section 14A & Rule 8D were not applicable to such case”.

4. The issue arising for consideration is, in case of a banking company, whether, disallowance under section 14A of the Income Tax Act, 1961 read with rule 8D can be made in respect of exempt income earned by way of dividend, as, the shares/securities are held as stock-in-trade.

5. The learned Authorised Representative of the assessee submitted, there is no manner of doubt that in case of a banking company shares and securities are held as stock-in-trade as per the guidelines issued by Reserve Bank of India. He submitted, since the dividend income earned by the assessee is incidental to the shares and securities held as stock-in-trade for regular business purpose, they have to be excluded for computing disallowance under section 14A r.w.r. 8D. In support of such contention, learned Counsel relied upon the decision of the Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC). Further, he submitted, while deciding identical issue in assessee's own case in assessment years 2008-09, 2009-10, 2010-11 and 2012-13, the Tribunal following the decision of the Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT (supra) and other decisions held that no disallowance under section 14A r.w.r. 8D can be made in respect of dividend earned on shares/securities held as stock-in-trade. Thus, he submitted, the disallowance made should be deleted. In support of his contention, learned counsel also relied upon the following decisions:

*Nice Bombay Transport (p) Ltd. vs ACIT [2019] 103 taxmann.com
338(Del-Trib)*
Punjab National Bank, ITA no1519/Mum/2016 dated 09.01.2019
CIT vs Punjab & Sind Bank [TS-650-HC-2019(Del)]
*Central Bank of India vs DCIT, ITA no. 3739/Mum/2018 dated
29.01.2020*

6. The learned Departmental Representative submitted, in case of Maxopp Investment Ltd. vs. CIT (supra), the Hon'ble Supreme Court has made it amply clear that no distinction can be made between shares/securities held as stock-in-trade or investment. Therefore, apportionment of expenditure for earning exempt income has to be made irrespective of the fact whether the shares and securities are held as stock-in-trade or investment.

7. We have considered rival submissions and perused the materials on record. The issue to be decided is, whether disallowance under section 14A r.w.r. 8D can be made in respect of dividend income earned on shares/securities held as stock-in-trade by a banking company. This issue came up for consideration before the Hon'ble Punjab and Haryana High Court in case of State Bank of Patiala. The Hon'ble High Court while deciding the issue held that in case of banking company, since, shares/securities are held as stock-in-trade and not as investment, no disallowance under section 14A r.w.r. 8D can be made. When the matter travelled to Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT (supra), the Hon'ble Supreme Court while dismissing the appeal of the revenue against the decision of the Hon'ble Punjab & Haryana High Court in case of State Bank of Patiala, held that where the shares/securities are held as stock-in-trade and is a business activity of the assessee and dividend income is earned incidentally, no disallowance under section 14A r.w.r. 8D can be made. Further, following the ratio laid down by the Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT (supra), the coordinate Bench in assessee's own case in assessment year 2011-12 and 2012-13 vide ITA No. 4486/Mum/2017 and others dated 28.02.2019 has held that no disallowance under section 14A r.w.r. 8D can be made. In view of the aforesaid, we hold that shares/securities held as stock-in-trade should be excluded from the average value of investment for computing disallowance under section 14A r.w.r. 8D. This ground is allowed.

8. In the result, appeal is allowed as indicated above.

Order pronounced in the open court on 11th August, 2021.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 11/08/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai