

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 6444/Del/2017
Assessment Year: 2014-15**

Addl. CIT, Spcl. Range-7,
New Delhi.

vs.

PNB Gilts Ltd.,
5, Parliament Street,
New Delhi.

PAN : AAACP7685B
(Appellant)

(Respondent)

Appellant by : Sh. B.S. Anant, Sr. DR
Respondent by: Sh. Khateeb Yousuf, FCA &
Ms. Sana Baqai, CA

Date of hearing: 17.11.2021

Date of order : 08.12.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the assessment order dated 31.07.2017 passed by the learned Commissioner of Income Tax (Appeals)-38, New Delhi ("Ld. CIT(A)") in the case of PNB Gilts Ltd. ("the assessee") for the assessment year 2014-15, the Revenue preferred this appeal.

2. Brief facts of the case are that the assessee company is a subsidiary of Punjab National Bank with the object of creating a market for government securities. Under a license from RBI, the assessee has been acting as a primary dealer in Government securities. Assessee is a

trader in the government securities markets including treasury Bills and other debt instruments like PSU Bonds, interest Rate Derivatives and other money market instruments and is registered as an NBFC with RBI.

3. For the assessment year 2014-15, the assessee filed their return of income on 25.09.2014 declaring an income of Rs.85,62,26,770/-. Assessment u/s. 143(3) of the Income-tax Act, 1961 (for short "the Act") was complete by order dated 30.12.2016 by making an addition of Rs.2,19,41,880/- u/s. 14A of the Act read with Rule 8D of the Income-tax Rules. The assessee pleaded that they are dealing in securities and no expenditure was incurred in relation to exempt income in terms of section 14A of the Act and as a matter of fact, no additional efforts were put to earn the tax free income since it generated from the stock in trade which were procured in the normal course of business. Further, the case of the assessee is that there is no direct nexus between the expenditure disallowed and the expenditure incurred to earn the tax free income. Further, the assessee *suo moto* computed disallowance on account of expenses attributable to exempt income u/s. 14A read with rule 8D(2)(iii) at 0.5% of the average value of the investment which came to Rs.32,82,000/-.

4. When the assessee preferred appeal, learned CIT(A) considered all these factors in the light of the decision of Hon'ble Delhi High Court in the case of ACIT vs. Acb India Limited (2015) 62 taxmann.com 71 (Del) wherein it was held that such investments as would yield dividend should alone be taken into account for the purpose of computing the disallowance, but not the entire investment comprising the investments which did not yield any dividend income during the year. On this

premise, Id. CIT(A) accepted the contention of the assessee and reached the disallowable part under rule 8D(2)(iii) to be Rs.21,94,188/-.

5. Aggrieved by such a finding of Id. CIT(A) in restricting the disallowance to Rs.21,94,188/- as against the addition of Rs.2,19,41,880/- made by the Assessing Officer, Revenue preferred this appeal.

6. Learned DR places heavy reliance on the assessment order and submitted that the assessee had received exempt income of Rs.4,58,21,781/- and therefore, Id. CIT(A) is not justified in restricting the disallowance to Rs.21,94,188/-, deleting the addition of Rs.1,97,74,692/-.

7. Learned AR reiterated before us the same submissions made before the Id. CIT(A) and stated that for the purpose of computing the disallowance u/r 8D(2)(iii), only such investments which yield dividend has to be considered but not the entire investment in view of the decision of jurisdictional High Court in the case of ACIT vs. Acb India Ltd. (supra) and therefore, the order of the Id. CIT(A) is legal and does not warrant any interference.

8. We have gone through the record in the light of submission made on either side. It could be culled out from the orders of the authorities below that the assessee has been a subsidiary of one of the largest Indian Commercial Bank, i.e., Punjab National Bank and has been playing a pivotal role in creating market for Government Securities. The assessee has been dealing with the government securities markets including treasury Bills and other debt instruments

like PSU Bonds, interest Rate Derivatives and other money market instruments. It has been the case of the assessee that the dividend yielding securities were purchased in the regular course of business without any further efforts. No direct expenses were said to have been incurred by the assessee in dealing with the shares for the purpose of earning dividend nor any interest component is involved in dealing with such shares which are admittedly stock-in-trade. Now, the only question that arises for consideration is whether the Assessing Officer is justified in considering the entire investment for the purpose of computing the disallowance u/r 8D(2)(iii) or he should have considered only such investments as yielded dividend as pleaded by the assessee.

9. As held by the Id. CIT(A), this issue is no longer *res integra* and is squarely covered by the decision of Hon'ble jurisdictional High court in the case of Acb India Ltd. (supra), wherein it is held that while calculating the disallowance u/s. 14A read with Rule 8D(2)(iii) only those investments which could yield dividend should be taken into account and not those investment which could not earn any dividend during the year.

10. Learned CIT(A) followed the binding precedent of the jurisdictional High Court and therefore, her findings cannot be said to be illegal or irregular. Mere fact that the assessee received the dividend to the tune of Rs.4,58,21,781/- has no role to play in computing the disallowance u/s. 14A read with Rule 8D except to limit the disallowance to the quantum of dividend. With this view of the matter, we find the grounds of appeal of the Revenue to be devoid of merits

and accordingly, the same are dismissed. Consequently, the appeal of the Revenue is liable to be dismissed.

11. In the result, the appeal is dismissed.

Order pronounced in the open court on this the 8th day of December, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: /12/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER