

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"H" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA.NOs. 6023 & 6024/MUM/2019
(A.Ys: 2010-11 &2011-12)**

M/s. Kotak Securities Ltd., 27, BKC Bandra Kurla Complex Bandra (E), Mumbai -400051 PAN: AAACK3436F	v.	Addl. CIT – 4(3) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

**ITA.NOs. 6256 & 6257/MUM/2019
(A.Ys: 2010-11 & 2011-12)**

DCIT – 4(3)(1) Room No. 649, 6th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Kotak Securities Ltd., 27, BKC G Block, C-27 Bandra Kurla Complex Bandra (E), Mumbai -400051 PAN: AAACK3436F
(Appellant)		(Respondent)

Assessee by	:	Shri Farrokh Irani
Department by	:	Shri Shambhu Yadav
Date of Hearing	:	12.01.2022
Date of Pronouncement	:	31.03.2022

ORDER**PER S. RIFAUH RAHMAN (AM)**

1. These cross-appeals are filed by the assessee and Revenue against different orders of Learned Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 31.07.2019 for the A.Y. 2010-11 and A.Y.2011-12.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeals for Assessment Year 2010-11 as a lead assessment year.

3. In cross appeals, revenue and assessee has filled following grounds of appeal: - -

ITA.No. 6256/Mum/2019 (Revenue Appeal)

1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is right in deciding that amount of investments, which have earned exempted income during the year only should be considered for calculation of disallowance u/s. 14A r.w.r. 8D(iii) of the income Tax Act, 1961".

2. "The appellant craves leave to amend or alter any ground or add new ground which may be necessary."

"ITA.No. 6023/Mum/2019 (Assessee Appeal)

Ground NO.1 – Enhancement of disallowance u/s. 14A r.w. Rule 8D(2)(iii) of I.T.Rules by including the shares held as stock in trade.

1. *The Commissioner of Income tax (Appeals)-9, Mumbai ("the CIT(A)") enhancing the disallowance made by learned AO by directing the learned AO to re-compute disallowance u/s. 14A r.w.rule 8D2(iii) by including the Investments held by the appellant as stock-in-trade also.*

2. *That the learned CIT(A) erred in exceeding his jurisdiction and in enhancing the income of the Appellant by making disallowance on issue which was not the subject matter of Appeal.*

3. *He failed to appreciate and ought to have held that:*

a. *The AO has applied his mind and had excluded stock in trade from the computation of disallowance u/s 14A following the jurisdictional Bombay High Court decision in the case of India Advantage.*

b. *Since there is an application of mind by the AO in the remand proceedings, the same cannot be now relooked up by CIT(A) for enhancing the income as this in effect amounts to revision or reassessment in the appellate proceedings.*

4. *The Appellant prays that the enhancement made is illegal, bad in law and without jurisdiction and requires to be quashed.*

Ground No. II – disallowance of administrative expenses under section 14A r.w. Rule 8D(2)(iii) of I.T.Rules

1. *The CIT(A) erred in confirming action of AO regarding invocation of the provisions of Rule 8D(2)(iii) for disallowance u/s. 14A without recording his satisfaction regarding incorrectness of the Appellant's claim having regard to the accounts of the Appellant.*

2. *He further erred in directing AO to consider the amount of investments in subsidiaries and group companies which are strategic in nature for the purpose of computing the "Average Value of Investment" as per Rule 8D(2)(iii) r.w.s. 14A of the Act*

3. *He further erred in directing AO to consider the amount of investments which are held as stock in trade for the purpose of computing the "Average Value of Investment" as per Rule 8D(2)(iii) r.w.s. 14A of the Act.*

4. *He failed to appreciate and ought to have held that:*

a. *having regard to the accounts, the Appellant has not incurred any expenditure which was directly attributable towards earning of tax free dividend income*

and such disallowance cannot be made on the basis of presumptions and by applying rules mechanically;

b. There was no basis for making such an disallowance in accordance with Rule 8D(iii) to Section 14A without establishing that such expenditure was indeed incurred for earning exempt dividend income;

c. The Rule 8D (2)(iii) goes beyond the authority given to CBDT by S. 14A and Rule only determines the notional cost for holding investments which may or may not yield an exempt income and such notional cost for holding the investment has no relationship with the actual expenditure incurred and claimed by the Appellant;

d. Under section 14A, it is very much clear that only the expenditure which has been proved to be incurred in relation to earning of tax free income can be disallowed and, the section cannot be extended to disallow even the expenditure which is assumed to have been incurred for earning tax free income.

e. The Appellant has made substantial investments in its Subsidiaries / Group Companies / JVs etc in the past which are strategic in nature and which does not require day to day monitoring.

f. No administrative expenditure is required to be incurred for earning dividend income from mutual funds.

g. No disallowance u/s. 14A r.w. Rule 8D(2)(iii) can be made in respect of shares which are held as stock in trade because such shares are held during the business activity of the Appellant.

5. The Appellant prays that the AO be directed to delete the disallowance u/s. 14A towards administrative expenses.

6. Without prejudice to the above, it is submitted that the disallowance u/s 14A read with Rule 8D should be calculated excluding the strategic investment made in subsidiary companies / JV /Unlisted companies etc. as - it does not require any expenses on day to day basis

7. Without prejudice to the above, it is submitted that the disallowance u/s 14A read with Rule 8D should be calculated excluding the investment held as stock in Trade.

The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal as may be advised in due course."

4. It is brought to our notice that in assessee's own case the Coordinate Bench has decided the issue in favour of the assessee and against the revenue for the A.Y. 2012-13 in ITA.No. 6666/Mum/2016 and ITA.No. 7005/Mum/2016 dated 19.09.2018 in which all the issues raised by the assessee and revenue are elaborately addressed by the bench. We have considered the issue in details and observed that the Coordinate Bench has held as under:

"4.1 Facts qua disallowance u/s 14A are that the assessee reflected exempt dividend income of Rs.131.46 Lacs and made a suo-moto disallowance of Rs.9.35 Lacs against the same in the return of income. The subject matter of the appeal concerns only with quantum of administrative expenditure as per Rule 8D(2)(iii). The assessee defended its computation vide reply dated 18/02/2015, the relevant portion of which has already been extracted in the quantum assessment order. As per the submissions, the investments made by the assessee were strategic in nature and made for long term purpose and therefore, no day-to-day expenses were required to be incurred to manage the same. It was further pointed out that the investments held as stock-intrade were not required to be considered for the purpose of computation of the disallowance. As an alternative submission, the assessee pleaded to restrict the disallowance to Rs.23.45 Lacs, being 10% of cost of the investment division / share trading division. However, disregarding the same and not convinced with the genuineness of the claim made by the assessee, Ld. AO applying Rule 8D(2)(iii) computed disallowance of Rs.327.19 Lacs which was nothing but 0.5% of average investments of Rs.654.38 Crores held by the assessee. After adjusting the suo-moto disallowance of Rs.9.35 Lacs as made by the assessee, the net addition thus made worked out to Rs.317.84 Lacs.

4.2 *Aggrieved, the assessee reiterated the contentions without any success before Ld.CIT(A) wherein the stand of Ld. AO got confirmed. Aggrieved, the assessee is in further appeal before us.*

4.3 *The Ld. Sr. Counsel appearing for assessee has agitated the additions on legal grounds as well as on merits. Our attention has been drawn to the fact the Ld. AO erred in assuming jurisdiction without recoding proper satisfaction as to applicability of Rule 8D without examining the claim / computations / methodology of the assessee and therefore, the additional disallowance was not justified. For the merits, our attention has been drawn to the fact that aggregate disallowance of Rs.327.19 Lacs has been made against exempt income of Rs.131.46 Lacs, which was not, at all, justified and sustainable. It has further been contended that those investments which have not yielded any exempt income during the impugned AY were required to be excluded for computations in terms of the judgment of Delhi Tribunal (Special Bench) rendered in ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415]. Per Contra, Ld. CIT-DR submitted that the computations were to be made only as per the formula prescribed under the law.*

4.4 *We have carefully heard the rival contentions and perused relevant material on record including judicial pronouncements as cited before us. So far as the legal issue as raised by Ld. Sr. Counsel is concerned, we find that the issue in hand involves only quantum of administrative expenditure as per Rule 8D(2)(iii). Interestingly, both assessee as well as Ld. AO has made computations @0.5% as per Rule 8D(2)(iii) only and therefore, the applicability of the same is not under dispute. The difference in computation arises out of the fact that the assessee has excluded strategic investment as well as stock-in-trade while arriving at the disallowance whereas Ld. AO has adopted the aggregate value of investments irrespective of their nature. In our opinion, there is no quarrel between the assessee and the revenue as to applicability of Rule 8D(2)(iii) and therefore, the legal submissions as made by Ld. Sr. Counsel were not of much relevance and the same has to be disregarded.*

4.5 *So far as the nature of investments viz. strategic investments / stock-in-trade is concerned, we find that the controversy stood settled by the recent decision of Hon'ble Apex Court rendered in group of cases titled as Maxopp Investment Ltd. Vs CIT [12/02/2018 91 Taxmann.com 154], wherein Hon'ble court has expressed the*

view that the nature of investments would be of no relevance while computing disallowance u/s 14A. Therefore, the plea as raised by Ld. Sr. Counsel on these lines would also be of no help to the assessee.

4.6 However, in terms of the decision of Special Bench of the Tribunal rendered in ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415], we find strength in the plea of Ld. Sr. Counsel that only exempt income yielding investments were to be considered for the purpose of computation of disallowance u/s 14A. Drawing analogy from the decision of Hon'ble Supreme Court rendered in Maxopp Investment Ltd. Vs CIT [supra], we also find strength in the plea that the quantum of disallowance could not exceed the exempt income earned by the assessee during the impugned AY. Further, those investments which were not capable of yielding any exempt income were also to be excluded while arriving at the disallowance.

4.7 Keeping the above principles in mind, we have perused the nature of investments held by the assessee which are extracted at Page-14 of the impugned order. We find that the investments have been classified by the assessee as Strategic investments, Stock-in-trade & investment in other Shares / Venture Capital Fund. The assessee has already offered suo-moto disallowance @0.5% against investment in other Shares / Venture Capital Fund and therefore, there is no dispute against this category of investment. Therefore, the disallowance under dispute is against Strategic investments & Stock-in-trade. In the absence of adequate data before us, we direct the Ld. AO to compute disallowance @0.5% against Strategic investments & Stock-in-trade after excluding there-from those investments which have not yielded any exempt income during impugned AY or which were not, at all, capable of yielding any exempt income subject to a further condition that overall disallowance, in no case, shall exceed exempt income of Rs.131.46 Lacs earned by the assessee during the impugned AY. This ground stand partly allowed in terms of our above order."

5. We observe from the above findings that Coordinate Bench has addressed the issues raised by the revenue that Ld.CIT(A) has allowed only those investments which has earned exempt income should be

considered for calculation of disallowance u/s. 14A r.w. Rule 8D(2)(iii) of I.T. Rules. Since this issue is already settled in favour of the assessee that only those investments should be considered for calculation of disallowance u/s. 14A r.w. Rule 8D(2)(iii) of I.T. Rules and Coordinate Bench has also adjudicated the same issue in favour of the assessee and against the revenue, accordingly, appeal filed by the revenue is dismissed.

6. With regard to appeal filed by the assessee we observed that the grounds raised by the assessee is already addressed by the Coordinate Bench in ITA.No. 6666/Mum/2016 dated 19.09.2018 in which it has clearly addressed the issue that the disallowance u/s. 14A of the Act cannot exceed the exempt income and also it has addressed the issue of investments in stock in trade and also addressed the investments which are held for long term investment or stock in trade which has actually earned exempt income alone should be considered for making disallowance. Therefore, these issues are already addressed by the Coordinate Bench in assessee's own case for the A.Y. 2012-13 and decided in its favor. Therefore, we are inclined to allow the appeal filed by the assessee.

7. Since the issues involved in A.Y. 2011-12 are exactly similar with the A.Y. 2010-11, accordingly, even in this assessment year, appeal filed by the revenue is dismissed and filed by the assessee is allowed.

8. In the result, appeals filed by the Revenue are dismissed and appeals filed by the assessee are allowed.

Order pronounced in the open court on 31.03.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai / Dated /03/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum