**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

**ITA No. 92 & 93/Mum/2022**

(Assessment Years 2016-17 & 2017-18)

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| Edelweiss Financial Services Ltd<br>Edelweiss House,<br>Off CST Road, Kalina,<br>Santacruz (West),<br>Mumbai-400 098 | Vs. | The ACIT<br>Central Circle 1(2)<br>R. No. 906, 9th Floor,<br>Old CGO Bldg, Annex,<br>M.K. Road,<br>Mumbai- 400 020 |
| **(Appellant)** | | **(Respondent)** |

**PAN No. AAACE1461F**

**ITA No. 15/Mum/2022**

(Assessment Years 2017–18)

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|---|---|---|
| Edelweiss Securities Ltd<br>Edelweiss House,<br>Off CST Road, Kalina,<br>Santacruz (West),<br>Mumbai-400 098 | Vs. | The ACIT<br>Central Circle 4 (1)(1)<br>R. No. 604 , 6th Floor,<br>Aykar Bhavan<br>M.K. Road,<br>Mumbai- 400 020 |
| **(Appellant)** | | **(Respondent)** |

**PAN No. AAACK3792N**

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| **Assessee by** | : | Shri Ravikant Pathak, AR |
| **Revenue by** | : | Shri Amol Kirtane, CIT DR |

**Date of hearing:** 12.05.2022
**Date of pronouncement :** 23.06.2022

**O R D E R**

**PER PRASHANT MAHARISHI, AM:**

01. These are three appeals filed by the assesses for A.Ys. 2016-17 and 2017-18 involving common issue and therefore, same are taken together and disposed of by this common order.

## Edelweiss Financial Services Ltd

## ITA No. 92/Mum/2022
## A.Y. 2016-17

02. ITA No. 92/Mum/2022 is filed by the assessee against the order passed by the Commissioner of Income-tax (Appeals)-47, Mumbai [CIT (A)] dated 26th November, 2021, confirming the disallowance u/s 14A of The Income Tax Act [ The Act] read with Rule 8D of the Income Tax Rules, 1962 (the Rules) of ₹7,31,84,746/- and further enhancing the disallowance by ₹7,31,84,745/-invoking amendment in that rule.

03. Assessee has raised the following grounds of appeal:-

> *"1. (a) The Commissioner of Income Tax (Appeals)-47, Mumbai (hereinafter referred as CIT(A)) erred in confirming the action of the AO in making disallowance u/s 14A of the Income Tax Act, 1961 (Act) without recording his satisfaction having regard to accounts of the Appellant.*
>
> *(b) The CIT(A) erred in confirming the action of the AO in considering entire investment for the purposes of computing disallowance u/s 14A r.w. Rule 8D(2)(ii) and SD(2)(ii) of the Income Tax Act, 1962 (Rules) as against only those investment on which Appellant has actually earned the exempt income.*

*(c) The CIT(A) erred in making the enhancement of disallowance made u/s 14A of the Act thereby making the disallowance under rule 8D(2)(ii) of the Rules ignoring the facts that own fund of the Appellant are far in excess of investments of the Appellant.*

*(d) The CIT(A) erred in making the enhancement of disallowance made u/s 14A of the Act by applying the amended Rule 8D of the Rules amended vide notification dated 02/06/2016 without appreciating that the amended rule is applicable from the assessment year 2017-18 onwards and not for the subjected assessment year.*

*2. The CIT (A) erred in confirming the action of the AO in not allowing the TDS credit of Rs. 2,93,74,400/- tabulated below:*

| Particulars | Amount |
|---|---|
| Income offered and TDS claimed by the Appellant in subjected year whereas TDS has been deposited by the payer in next year | 71,50,215 |
| TDS deduced by the payer but not deposited to the credit of Central Government | 54,59,764 |
| Foreign Tax Credit | 1,43,60,662 |

*The Appellant submits that it has offered the related income from which TDS has been deducted in the year under consideration; hence, it shall be allowed to claim the TDS credit in the subjected year. The Appellant also submits that it shall not be forced to make the payment of TDS which has been deducted from the income of the Appellant by the payer but not paid to the credit of Central Government by them."*

04. Brief facts of the case shows that assessee is a company engaged in the business of merchant banking. It filed its return of income on 29 November 2016 at ₹129,18,56,260/-. Subsequently, the return was revised on 28 March 2018 at income of ₹128,73,01,580/-. The return of income was picked up for scrutiny.

05. The learned Assessing Officer found that assessee has earned exempt income of dividend amounting to ₹80,75,88,816/- and has suo motto computed disallowance of ₹12,06,069/- under Section 14A of the Act. The learned Assessing Officer specifically asked that why the disallowance under Section 14A of the Act should not be made as per Rule 8D of the Rules. The assessee submitted on 2nd January, 2019, stating that there is no further disallowance warranted as assessee has made disallowance of Rs 12,06,069/- giving details of such working. The learned Assessing Officer rejected the contention of the assessee and held that assessee cannot earn dividend income of ₹80.75 crores without any systematic management of its investment portfolio. Further, the assessee has not maintained separate accounts for its taxable and exempt income and therefore, he invoked Rule 8D of the Rules and rejected the suo motto disallowance of ₹12,06,069/-. He computed the disallowance under Rule 8D of the Rules in clause (i) ₹ nil, clause (ii) ₹ 28,12,195/- and clause (iii) ₹ 7,43,90,815/-. On the basis of this total disallowance after reducing suo motto disallowance made by the assessee was worked out at ₹ 7,31,84,746/-. The

assessment order under Section 143(3) of the Act was passed on 22nd January, 2020 by the learned Assessing Officer, assessing the total income of ₹136,04,86,326/-.

06. This order was challenged before the learned CIT (A). The learned CIT (A) rejected the argument of the assessee that Rule 8D has been invoked without recording any satisfaction under Section 14A (2) of the Act. The learned CIT (A) referred to Para no. 5 and held that proper satisfaction is recorded. The learned CIT (A) further noted that all the assets either yielded exempt income during the year or could yield in future, those assets should be considered for working out disallowance. Therefore, he rejected contention of assessee that only exempt income yielding assets should be considered for disallowance. He therefore upheld the disallowance of ₹7,31,84,746/-. The learned CIT (A) further noted that the learned Assessing Officer has failed to consider the amount disallowable under Rule 8D(2) of the Rules in the final computation of disallowance and therefore, he enhanced the disallowance by ₹28,12,000/- to be included. He further analyzed the annual accounts of the assessee and held that assessee has used mixed funds. He also invoked the new amended Rule where 1% of the annual average investment is required to be disallowed. Therefore, he computed 1% of such amount at ₹14,87,81,629/- and enhanced the disallowance by ₹7,31,84,745/-. He held that new amended rules of computation under Rule 8D of the Rules will apply as assessing officer has passed an order on 22nd

January 2020 after amendment. Therefore, aggrieved with that order assessee is in appeal before us.

07. The learned Authorized Representative submitted that:-

(i) The learned Assessing Officer has failed to record satisfaction with respect to incorrectness of voluntary disallowance offered by the assessee amounting to ₹12,06,069/-. Without recording such satisfaction, he could not have gone to invoke the provisions of Rule 8D of the Rules. For this proposition, he relied on the decision of Hon'ble Bombay High Court in the case of PCIT Vs. Bombay Stock Exchange Limited in ITA No. 1017 of 2017 (Boom HC). PCIT Vs. Bajaj Finance Limited 309 CTR 28 (Bom). He further submitted that the co-ordinate Bench in assessee's own case for A.Y. 2010-11 has decided this issue vide order dated 15th July, 2015, he therefore stated that this issue is covered in favour of the assessee by assessee's own case as well as order of Hon'ble Bombay High Court.

(ii) He submitted that for working of disallowance even otherwise could only be considered on dividend yielding investment. Thus, according to him those instruments on which no exempt income is earned the disallowance cannot be worked out. He

submitted that this issue has been decided in favour of assessee in assessee's own case for A.Ys. 2007-08, 2008-09, 2009-10, and 2010-11 vide order dated 14th March 2018.

(iii) He further stated that if the investment made in the dividend income earning instruments out of the interest free funds available with the assessee, no disallowance on account of interest can be made. He stated that identical issue has been decided in assessee's own case in ITA No. 4329/Mum/2014 dated 24th March 2018. He further relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Reliance Industries Ltd 410 ITR 466 (SC) and of Hon'ble Bombay High Court in HDFC Bank Ltd vs. DCIT [383 ITR 529].

(iv) He submitted that the learned CIT (A) has invoked the amendment made in Rule 8D of the Rules, by notification dated 2nd June 2016. He submitted that above notification was issued on 2nd June 2016, the impugned A.Y. 2016-17. Therefore, this amendment invoke by the learned CIT (A) for A.Y. 2016-17 is not proper. For this proposition, he relied on the decision of Hon'ble Supreme Court in case of CIT Vs. Essar Teleholding Limited 401 ITR 445 (SC), wherein it has

been held the amended rules cannot be applied retrospectively.

(v) He therefore submitted that enhancement made by the learned CIT (A) by invoking the amended Rule 8D of the Rules is incorrect.

08. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer. He also supported the order of the learned CIT (A) vide Para no. 9.2. He submitted that the learned CIT (A) extracting Para 5 of the assessment order has categorically held that there is a satisfaction recorded with respect to disallowance computed by the assessee. On the issue of quantum of disallowance, he supported the orders of the lower authorities.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. The ground no. 1 is with respect to the disallowance confirmed and enhanced by the learned CIT (A) under Section 14A read with rule 8D of the Rules. Admittedly, the assessee has earned exempt income of ₹80,75,88,086/-. The assessee has made suo motto disallowance under Section 14A of the Act of ₹12,06,069/-. As per Para no. 5, the learned Assessing Officer has noted that assessee was specifically asked vide notice dated 5th November 2018 that why the disallowance under Section 14A of the Act should not be made as per Rule 8D of the Rules. Assessee submitted reply on 2nd January 2019, stating that no further disallowance was warranted. The working of disallowance

submitted by the assessee is placed at page no. 58 of the Paper Book. At page number 59-62 a detail explanation was submitted. It was stated that total expenditure considered under the other head to exempt income is shown. It was also specifically stated that there is no interest disallowance under Section 14A of the Act as assessee has sufficient interest free funds amounting to ₹1,601 crores whereas, investment from which dividend can be eared is merely ₹1,556 crores. Therefore, there is availability of excess interest free fund of ₹45.19 crores. It was further stated that even the debenture interest and discount on commercial paper cannot be considered for disallowance as interest. It also relied on Circular no. 647 dated 22nd March 1993. Assessee submitted that expenses debited to profit and loss account are also related to various incomes shown in the profit and loss account apart from dividend income and therefore, proportionate employee cost and expenses worked out at ₹12,06,069/- are disallowed. The details of such expenses are also tabulated at page no. 6 of the order of learned CIT (A). Assessee has identified total expenditure of ₹84,52,25,428/- and made a disallowance of proportionate expenses of dividend income taking the basis of allocation being percentage of employee cost and thus, worked out the disallowance of ₹12,06,069/-.

010. The provision of section 14A(2) specifically provides that the learned Assessing Officer was determined the amount of expenditure incurred in relation to exempt income in accordance with method described. Naturally, such

method is prescribed in Rule 8D of the Rules. However, that section mandates that before proceeding to compute disallowance under Rule 8D, the learned Assessing Officer is to record a satisfaction where assessee has offered same disallowance about its correctness with regard to the accounts of the assessee. Therefore, it is mandate for the learned Assessing Officer prior to rejection of the voluntary evidences offered by the assessee to look at the amount of disallowance offered, exempt the disallowance offered with the accounts of the assessee and then, record his satisfaction that why the disallowance offered by the assessee voluntarily is not correct. Unless, he records such satisfaction, he cannot proceed to a disallow sum as per Rule 8D of the Rules. Thus, recording of the satisfaction about the incorrectness of the claim of the assessee is Sine qua non before and making in disallowance under Rule 8D of the Rules.

011. Section 14A (2) & (3) provides as under :-

> [(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]

012. The Hon'ble Bombay High Court in PCIT vs. Bombay Stock Exchange Limited (supra) in Para no. 11 it is held that non satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of accounts submitted by the assessee if the learned Assessing Officer has not carried out the aforesaid exercise but rejecting the disallowance offered by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules the application of Rule 8D of the Rules would only arise once the learned Assessing Officer is not satisfied on an objective criteria in the context of its accounts that suo motto offered by the assessee is not proper. Honourable High court held that :-

**"11.** Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

**12.** In fact, the Supreme Court in the case of *Maxopp Investment Ltd*. v. *CIT* [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.

**13.** In the present facts, the Tribunal has correctly come to the conclusion that non-satisfaction as recorded by the Assessing Officer for rejecting the sou motu disallowances claimed by the assessee is not done as required under section 14A(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference."

013. The Hon'ble High Court also quoted the decision of Hon'ble Supreme Court in Maxopp Investment Ltd. Vs. CIT 301 CTR 489, wherein it is held that only after the satisfaction recorded under Section 14A of the Act (2), the occasion to apply Rule 8D of the Rules for apportionment of expenses can arise. It was held that :-

**"41.** Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo*

*moto* disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

014. So is also held by Hon'ble Bombay High Court in case of PCIT Vs. Bajaj finance Limited 309 CTR 28 (Bom). In Para no. 9 Hon'ble High Court deleted the disallowance under Rule 8D of the Rules for the reason that the assessee offered voluntarily and made detail representation with no other expenditure is incurred by assessee, the learned Assessing Officer rejected the explanation of the assessee but merely proceeded to make disallowance by invoking Rule 8D of the rules.

015. Undoubtedly, similar view has been taken in assessee's own case for A.Y. 2010-11.

016. Circular No 14/2006 dated 28/12/2006 also provides that :-

**"11.2** In view of the above, a new sub-section (2) has been inserted in section 14A so as to provide that it would be mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as

may be prescribed. However, the Assessing Officer shall follow the prescribed method if, having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income. Provisions of sub-section (2), will also be applicable in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income."

017. In this background, it is required to be seen that how the learned Assessing Officer has satisfied himself about the incorrectness of the claim of disallowance offered by the assessee. The learned CIT (A) has held that in paragraph no. 5, the learned Assessing Officer has recorded the satisfaction. As per Para no. 5 of the assessment order the learned Assessing Officer held as under:-

*"5. Disallowance u/s 14A of the Income Tax Act, 1961, read with Rule 8D of the Income Tax Rules, 1962*

*5.1 A perusal of the case records show that during the year under consideration the assessee company has earned Exempt income in the form of Dividend amounting to Rs 80,75,88,816 The assessee has suo moto computed disallowed an amount of Rs. 12,06,069/-us 14A of the IT Act. The assessee was specifically asked vide notice issued u/s 142(1) of the IT Act dated 05/11/2018 why the disallowance u/s 14A of the IT Act should not be made as per Rule 8D.*

*In response, the assessee submitted a reply dated 02/01/2019 wherein the assessee has stated that no further disallowance is warranted.*

*5.2 The case records and the replies submitted by the assessee have been perused. It is a fact that the assessee cannot earn Dividend income to the tune of Rs.80,75,88,816/- without any systematic management of its investment portfolio. Further, investment decisions being complex in nature require market research, day to day analysis and planning. Furthermore, the assessee has not maintained separate accounts for its taxable and exempt income. Hence, the present case is a fit case to invoke Rule 8D of the IT Rules. The assessee has suo moto worked adhoc disallowance u/s 14A amounting to Rs. 12,06,069/ However, as stated above, the disallowance is required to be calculated as per Rule 8D. Following the ruling of the Apex court in the case of Maxopp Investments [(2018) 402.*

*ITR 0640 (SC) the disallowance in the instant case is computed as under.*

*Rule 8D Nil*

*Rule 8D(ii) ₹28,63,486/-*

| | |
|---|---|
| *Investments as on 31/03/2015* | *1444,55,14,263* |
| *Investments as on 31/03/2016* | *1531,08,11,698* |
| *Average investments* | *1487,81,62,980* |
| *Average total assets* | *4543,56,61,827* |

*Interest*

*85,88,016X1487,81,62,980/4543,56,61,827=*

*Rule 8D(iii) 0.5% of 14878162980 =Rs.7,43,90,815/-*

*Disallowance u/s 14A as per rule 8D = 7,43,90,815/-*

*Less: Adhoc Disallowance already made= 12,06,069/-*

*Total disallowance under Section 14A=7,31,84,746/-*

018. On careful reading of the above assessment order it is amply clear that the learned Assessing Officer has not at all recorded any satisfaction 'with regard to accounts' that how the disallowance offered by the assessee is incorrect. Though, Assessee has given complete list of expenditure, which contained 13 types of expenditure. Assessee has worked out proportionate expenditure of disallowance giving allocation key of percentage of employee cost and this worked out such disallowance at ₹12,06,069/- out of the total expenditure of ₹84,52,25,428/-. Assessee has also submitted before him that no interest expenditure is incurred as assessee has higher interest free funds available. Despite this, the learned Assessing Officer noted only general observation and proceeded to disallow under Rule 8D of the Rules. We do not find any reference to nature of expenditure incurred by the assessee and quantum of expenditure disallowed by the assessee with regard to books of accounts that how it is it inadequate or incorrect. Merely noting general observations does not satisfy requirement of section 14A (2) of the Act. Thus, we hold that the learned Assessing Officer has failed to record satisfaction about incorrectness of voluntarily

disallowance offered by the assessee on examination of the accounts, that it is incorrect. The learned Assessing Officer does not have authority to invoke the provisions of Rule 8D of the Rules without recording satisfaction. Satisfaction of the ld AO mandated u/s 14A (2) is the entry gate for invoking computation of disallowance u/r 8D . Such is also the mandate of Hon'ble Supreme Court and Hon'ble Bombay High Court in various decisions quoted above. In assessee's own case similar issue is decided by the coordinate bench in earlier years. Therefore, in absence of any such satisfaction no disallowance under Section 14A of the Act can be made. The learned Assessing Officer is directed to retain the disallowance offered by the assessee of ₹12,06,096/- under Section 14A of the Act. Accordingly, ground no. 1 (a) of the appeal is allowed. In view of our above decision, ground no. 1 (b) to (d) becomes redundant. In the result, ground no. 1 of the appeal is allowed.

019. Ground no. 2 is with respect to the claim of TDS credit of ₹2,93,74,400/-. In the return of income assessee has claimed TDS credit of ₹51,84,18,963/-, the learned Assessing Officer restricted at the time of assessment order it to ₹48,90,44,563/-. Thus, there was a short credit of ₹2,93,74,400/-. The matter was agitated before the learned CIT (A), the TDS credit was rejected. He noted that TDS paid to the credit of Central Government in next year would be reflected in form no. 26AS for next year and therefore, a sum of ₹71,50,215/- out of the above credit can be granted to the assessee only in the year in which it

is reflected in form no. 26AS. Therefore, he confirmed the non granting of TDS of ₹71,50,215/-. With respect to sum of ₹54,59,764/- CIT (A) noted that the claim of the assessee with respect to the TDS deducted cannot be entertained as deductors have not deposited the above sum. He therefore, stated that assessee should approached its deductors to upload revised TDS returns and then only the assessee can be granted credit for this. He also confirmed the action of the learned Assessing Officer in not granting credit for ₹54,59,764/-. He also noted that assessee has claimed Foreign Tax Credit of ₹1,43,60,662/-. He noted that no details are available and therefore, no such tax credit can be granted. With respect to the sum of ₹24,03,759/-, which sum could not be reconciled and therefore, he confirmed the action of the learned Assessing Officer. He further held that though the claim of the assessee is rejected on merit, assessee is free to make such claim under Section 154 of the Act as and when such credit appears in form no. 26AS. Therefore, assessee is aggrieved with the same.

020. The learned Authorized Representative referred to page no. 63 of the paper book and submitted that there is a detail reconciliation provided in the return of income. He submitted that if tax is deposited by the deductor in subsequent year but if the income offered is in the current year the assessee should be granted credit for TDS in the year in which income is offered. He further stated that at page no. 66 of the Paper Book, assessee has given the working of the Foreign Tax Credit, which is available

before the learned Assessing Officer as well as before the learned CIT (A) but despite that same was not considered. He further stated that non-deposit of TDS by the tax deductor cannot be a reason to disallow TDS credit in the hands of the assessee. For both this proposition, he relied upon the decision of co-ordinate Bench in case of Greatship (India) Ltd. Vs. DCIT in ITA no. 5562/Mum/2018 and ECL finance Limited vs. ACIT in ITA No. 899/Mum/2018.

021. The learned Departmental Representative supported the order of the learned Commissioner of Income tax (Appeals).

022. We have carefully considered the rival contentions as well as perused the orders of the lower authorities. In the present case, assessee has claimed TDS credit of ₹51,84,18,963/- in its return of income. ₹48,90,44,563/- was allowed as credit by the learned Assessing Officer. Thus, there is a short credit of TDS of ₹2,93,74,400/-. A sum of ₹32,04,902/- is the TDS which did not appear in form no. 26AS of the assessee for A.Y. 2016-17 but appeared in form no. 26AS of A.Y. 2017-18. Therefore, there is no dispute in the case of that the tax deducted has not been deposited by the deductor. The issue in which year the assessee should be granted the credit for tax deducted at source. We find that provision of section 199 clearly shows that the year in which the assessee offers the income on which tax is deducted, for that year, credit for TDS should be allowed. Accordingly, we direct the learned Assessing Officer to grant assessee the credit

of ₹32,04,902/-. Another sum of ₹39,45,315/-, where the TDS is shown in form no. 26AS for A.Y. 2015-16 however, the assessee offered the income in A.Y. 2016-17. Therefore, the credit of the above TDS should also be granted to the assessee in A.Y. 2016-17. Naturally, it was stated before us that assessee did not claim the credit for such sum in A.Y. 2015-16. Therefore, AO is directed to grant credit of sum of ₹39,45,315/-. Another is a foreign tax credit of ₹1,43,60,662/- for which assessee submitted the detail working. However, the learned CIT (A) stated that no information is provided by the assessee. Assessee has given such working at page no. 65 to 66 of the Paper Book. Therefore, we set aside this issue back to the file of the learned Assessing Officer with a direction to grant credit of foreign tax amounting to ₹1,43,66,662/- after verification. The assessee has shown a tax deduction at source made by tax deductor amounting to ₹54,59,764/-, which has been paid to the credit of Central Government by the various parties. However, assessee has submitted the list of 16 such parties where the amount of income has been offered by the assessee as income however, consequent TDS of ₹5459764/- was not granted as credit to the assessee. The reason being that it did not appear in form no. 26AS of the assessee. If the assessee proves that such tax has been deducted by the parties but it has not been reflected in the form no. 26AS, this issue has been considered by CBDT in office memo dated 11th March 2016. In paragraph no. 3, the CBDT has directed the officers not to enforce demand arising in such circumstances. Further, merely because the tax deductor

has not filed the TDS return there is enough mechanism available to catch hold of such defaulting tax deductor. No doubt, it is the duty of the assessee to show that tax has been deducted. This issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in case of Kartik Vijaysinh Sonavane Vs. DCIT [2021] 132 taxmann.com 293 (Gujarat). Therefore, this issue is restored to the file of the learned Assessing Officer for limited purpose of verification and thereafter to grant credit of the same. Further a sum of ₹24,03,759/- where the tax deduction at source could not be reconciled. This issue is also restored to the file of the learned Assessing Officer with a direction to the assessee to show that how such TDS is refundable from credit is available to the assessee. Accordingly, ground no. 2 of the appeal is partly allowed.

023. In the result, the appeal filed by the assessee is partly allowed.

**ITA No. 93/Mum/2022**
**A.Y. 2017-18**

024. The appeal of the assessee for A.Y. 2017-18 in ITA No. 93/Mum/2022 is filed against the order of the learned CIT (A)-47, Mumbai dated 26th November, 2021 involving following grounds of appeal:-

> *"1. (i) The Commissioner of Income Tax (Appeals)-47, Mumbai (hereinafter referred as CIT(A)) erred in upholding the action of the Deputy Commissioner of Income Tax, Central Circle -1(1) [AO] in making disallowance u/s 14A of Income Tax Act, 1961 (Act)*

*r.w. Rule 8D of the Income Tax Rules, 1962 (Rules) without recording his dis-satisfaction with correctness of the claim of the Appellant having regard to its books of accounts.*

*(ii) The CIT(A) erred in upholding the action of the AO in considering all investment for the purposes of making disallowance as per rule 8D(2) of the Rules as against only those investment on which Appellant has actually earned the exempt income and excluding the investment on which no exempt income is earned during subjected year.*

*2. The CIT(A) erred in confirming the action of the AO in not allowing credit for (a) TDS deducted and paid in subsequent years by the deductor and (b) TDS deducted but not paid to the credit of Central Government by the deductor.*

*3. The CIT(A) erred in not allowing deduction of education cess under section 28/37 of the Act."*

025. The assessee filed return of income on 29th November, 2017 at ₹52,92,86,530/-. It was revised on 23rd March 2018 at ₹53,3841,210/-. It was further revised on 28th March 2019 at ₹40,60,90,400/-. The assessee has earned a dividend income of ₹101,01,54,794/- and has offered suo motto disallowance under Section 14A of the Act of ₹8,78,190/-. The learned Assessing Officer similar to the facts for A.Y. 2016-17 invoked the provisions of Rule 8D of the Rules and made a disallowance of ₹15,78,402/-. Thus, the net addition / disallowance of ₹15,70,212/- was made and assessment order under Section 143(3) of the Act was

passed on 10th January, 2020 at a total income of ₹55,86,90,612/-. The assessee preferred an appeal before the learned CIT (A), where on identical reasons, the learned CIT (A) confirmed the disallowance and upheld the action of the learned Assessing Officer.

026. The learned Authorized Representative invoking the ground no. 1 stated that facts are identical to the facts for A.Y. 2016-17 that was also confirmed by the learned Departmental Representative.

027. We have carefully considered the rival contentions and perused the orders of the lower authorities. As ground no. 1 of the appeal is identical to the facts for A.Y. 2016-17, except the disallowance offered by the assessee and disallowance confirmed by the lower authorities. In the present case, the details of the voluntary disallowance offered appears at page no. 6 and 7 and order of the learned CIT (A) where out of the total expenditure of ₹107,45,57,699/-, assessee taking the employ cost as allocation key offered disallowance of ₹8,78,190/- towards various expenditure. It was stated that no other expenditure is incurred and interest expenditure cannot be considered in view of availability of higher interest free funds available with the assessee. On this explanation, no satisfaction is recorded by the learned Assessing Officer about the incorrectness of the claim with regard to the accounts of the assessee. Therefore, for the reason given by us in A.Y. 2016-17 we also hold that no further disallowance can be made. Accordingly, we direct the learned Assessing Officer to retain the disallowance under

Section 14A of the Act as offered by the learned assessee. Accordingly, ground no. 1 of the appeal is allowed. Ground no. 2 is also in granting TDS credit to the assessee of tax deduction at source but paid in subsequent years by the deductor and further TDS deducted but not paid to the credit of the Government and hence, no TDS credit granted to the assessee, we direct the learned Assessing Officer to grant the credit of TDS to the assessee of the above both the sums as per our direction for A.Y. 2016-17. Thus, ground no. 2 is allowed.

028. Ground No 3 was not pressed and hence, dismissed.

029. In the result, ITA No. 93/Mum/2022 filed by the assessee is partly allowed.

**Edelweiss Securities Limited**
**ITA No. 15/Mum/2022**
**A.Y. 2017–18**

030. ITA no. 15/Mum/2022 is filed by the assessee against the order passed by the National Faceless Appeal Centre, Delhi (NFAC) [the learned CIT(A)] for A.Y. 2017–18 on 12th November, 2021 raising following grounds of appeal:

> *"1. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)' for the sake of brevity] erred in dismissing the appeal filed by Edelweiss Securities Limited [hereinafter referred as Appellant' for the sake of brevity] against the assessment order dated 23 December 2019 passed by the Assistant Commissioner of Income Tax, Circle 4(1)(1), Mumbai (hereinafter referred to as 'the AO'*

*for the sake of brevity) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) by holding that the Appellant had opted to settle the dispute by filing an application under the Direct Tax Vivad se Vishwas Act, 2020.*

*The Appellant submits that it had not filed any application under the Direct Tax Vivad se Vishwas Act, 2020 in respect of its appeal filed challenging the disallowances made by the AO in the assessment order passed under section 143(3) of the Act for assessment year under consideration. The Appellant, therefore, prays before Your Honours that the order passed by the CIT(A) may be set-aside.*

*While on the subject, the Appellant humbly submits that it has filed application under Vivad se Vishwas Act against appeal pending before the Hon'ble CIT(A) in response) to order passed u/s 272A of the Act leving the penalty of Rs. 10,000/-. However, it has not filed any application under Vivad se Vishwas Act, 2020 against the quantum appeal (i.e. order passed u/s 143(3) of the Act). Therefore, the order passed by the NFAC shall be set aside.*

*2. The CIT (A) erred in not adjudicating the net disallowance of Rs. 3,09,68,694/- made u/s 14A of the Act by the AO. 3. The CIT(A) erred in not adjudicating the addition of Rs. 3,09,68,694/- made to book profit computed as per section 115JB of the Act being disallowance made u/s 14A of the Act.*

*3. The CIT(A) erred in not adjudicating the addition of Rs.3,09,68,694/- made to book profit computed as per section 115JB of the Act being disallowance made u/s 14A of the Act."*

031. The brief fact of the case shows that assessee is a share broker company. It filed its return of income on 30th November, 2017, declaring total income of ₹27,74,88,130/- under normal provision and book profit was computed under Section 115JB of the Act at ₹28,81,99,511/–. Subsequently, the return was revised on 25 March 2019, at ₹14,79,59,180/–. The case of the assessee was picked up for scrutiny. During the assessment proceedings, the assessee has earned dividend income of ₹7,87,624/– against which the assessee has offered disallowance under Section 14A of the Act of ₹12,81,856/–. The learned Assessing Officer rejected the disallowance offered by the assessee and computed the disallowance applying rule 8D of the Rules of ₹3,22,49,850/–. Therefore, the balance amount of ₹3,09,68,694/– is added to the total income of the assessee as disallowance and total income of the assessee is computed at ₹17,89,57,873/– by an assessment order dated 23rd December, 2019 passed under Section 143(3) of the Act.

032. The assessee preferred the appeal before the National Faceless Centre (NFAC) which dismissed the appeal of the assessee by stating that assessee has opted for Vivad se Vishwas Scheme.

033. Before us, assessee submitted that it has never filed any application under the Direct Tax Vivad se Vishwas Scheme and therefore, the appeal filed by the assessee dismissed by the NFAC is incorrect. Even otherwise, assessee submitted that addition made by the learned Assessing Officer of disallowance under Section 14A of the Act is devoid of any merit. The main reason for saying so is that assessee has submitted that it has earned an exempt dividend income of ₹7,87,624/– and against which it has offered disallowance under Section 14A of the Act of ₹12,81,156/–. Therefore, any further disallowance is unwarranted, as the disallowance cannot exceed the exempt income earned by the assessee. Even otherwise, it is submitted that the learned Assessing Officer without recording any satisfaction in terms of Section 14A of the Act that how the disallowance offered by the assessee is incorrect, the learned Assessing Officer has proceeded to compute disallowance under Rule 8D of the Rules. He submitted that this action of the learned Assessing Officer is contrary to the decision of Hon'ble Supreme Court in case of Maxopp Investment Limited as well as the decision of Hon'ble Jurisdictional High Court in case of Principle Commissioner of Income Tax vs. BSE [ supra] . He therefore submitted that on the merits of the case the addition deserves to be deleted.

034. The learned Departmental Representative supported the order of the learned Assessing Officer.

035. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts

clearly show that assessee has claimed exemption of only ₹7,87,624/– in the return of income. Against this, the assessee has offered suo moto disallowance of ₹12,81,156/– under Section 14A of the Act. The learned Assessing Officer without having any look at the accounts of the assessee as well as the disallowance offered by the assessee has held that disallowance offered by the assessee is incorrect. He further held that once, it is decided that the provisions of section 14A of the Act are applicable, the disallowance is required to be computed according to Rule 8D of the Rule only. Accordingly, he computed the disallowance of ₹3,22,49,850/–. We find that provision of Section 14A(2) of the Act gives authority to compute the disallowance as per Rule 8D of the Rules only when the disallowance offered by the assessee is found to be not correct by the learned Assessing Officer after looking at the accounts of the assessee. We find that in the present case, the learned Assessing Officer has jumped the guard by invoking the provisions of Section Rule 8D of the Rules and computing the disallowance under that Rule without recording any satisfaction about the incorrectness of disallowance offered by the assessee. The action of the learned Assessing Officer is not in accordance with the provisions of Section 14A (2) of the Act as well as the mandate of Hon'ble Supreme Court as well as the jurisdictional High Court. In case of ITA no 92 & 93/ M/2019 in this order we have decided identical issue on similar facts deleting the disalloawance u/ 14A of the Act. In view of this, we find that the disallowance under Section 14A of the Act made by the learned

Assessing Officer deserves to be deleted. Accordingly, ground no. 2 of the appeal is allowed.

036. In view of our decision in ground no. 2, the ground no. 1 becomes infructuous and hence, dismissed.

037. Accordingly, appeals of the assessee are partly allowed.

Order pronounced in the open court on 23.06.2022.

| Sd/- | Sd/- |
|---|---|
| (RAHUL CHAUDHARY) | (PRASHANT MAHARISHI) |
| (JUDICIAL MEMBER) | (ACCOUNTANT MEMBER) |

Mumbai, Dated: 23.06.2022
*Sudip Sarkar, Sr.PS*
Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai