

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2446/MUM/2021
(Assessment Year: 2015-16)

State Bank of India
(Successor to Erstwhile
State Bank of Patiala),
Corporate Centre, State Bank Bhavan,
3rd Floor, FRT Dept. Nariman Point,
Mumbai - 400021
[PAN: AAACS8577K]

..... Appellant

DCIT,
Circle 2(2)(1), Mumbai,

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Ketan Ved & Ms. Shraddha
For the Respondent/Department : Shri Sanyam Suresh Joshi

Date of conclusion of hearing : 13.10.2022
Date of pronouncement of order : 10.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 26.10.2021, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 24.02.2017, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

“ 1. *The Id. CIT(A) erred in law and in facts and circumstances of the case confirming the disallowance u/s 14A made by*

the assessing officer.

- 2. The Ld. CIT(A) failed to appreciate that the Apex Court has clearly held that only when expenditure has been actually incurred in earning dividend income, whether held as strategic investment or otherwise, any disallowance is called for but not when investments are held in business as stock in trade and no expenditure has been actually incurred, in which case no disallowance is warranted.*
 - 3. The Ld. CIT(A) failed to appreciate that appellant had been continuously treating securities as stock in trade and there has been no change in the method over since from year when the appellant's appeal against disallowance u/s 14A was decided in its favour by Hon'ble Supreme Court reported in 402 ITR 640 and therefore, question of any disallowance u/s 14A does not arise.*
 - 4. The Id. CIT(A) failed to take into consideration the submission that since interest free funds far exceed the investments in securities earning tax free income as held by Hon'ble Supreme Court in appellants own case reported in 432 ITR 1, no disallowance u/s 14A was warranted."*
3. The Appellant, i.e. State Bank of India (successor to State Bank of Patiala), filed return of income for the Assessment Year 2015-16 on 23.11.2015. The case of the Appellant was selected for scrutiny and assessment under Section 143(3) of the Act was framed on the Appellant, vide Assessment Order, dated 24.02.2017. The Appellant filed an appeal before CIT(A) against the aforesaid assessment order which was partly allowed as the CIT(A), inter alia, deleted the disallowance of INR 2,11,33,541/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Income Tax Rules (hereinafter referred to as 'the Rules'). Both, the Appellant and the Revenue preferred appeal before the Tribunal against the aforesaid order of the CIT(A). While the appeal filed by the Appellant/Assessee was pending for final adjudication, the appeal filed by the Revenue (ITA No. 1325/CHD/2017) was

disposed off by the Tribunal vide order, dated 03.04.2018 and the issue relating to disallowance under Section 14A of the Act was remitted back to the Assessing Officer to consider the claim of Appellant in the light of judgment of the Hon'ble Supreme Court in case of Maxopp Investments Ltd:402 ITR 640.

4. In compliance with directions issued by the Tribunal, the Assessing Officer passed an Assessment Order, dated 26.12.2019, under Section 143(3) read with Section 254 of the Act again making the disallowance of INR 2,11,33,541/- under Section 14A of the Act read with Rule 8D of the Rules. Being aggrieved the Appellant carried this issue in appeal before the CIT(A) who declined to interfere with the order passed by the Assessing Officer and dismissed the ground raised by the Appellant in this regard vide order, dated 26.10.2021. Being aggrieved, the Appellant has preferred the present appeal before us on the grounds reproduced in paragraph 2 above. All the grounds are directed against the disallowance of INR 2,11,33,514/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Rules, and are, therefore, taken up together.
5. The Ld. Authorised Representative for the Appellant submitted that the issue stands covered in favour of the Appellant by the judgment of the Hon'ble Punjab & Haryana High Court in it's own case, i.e., PCIT vs. State Bank of Patiala: [2017] 391 ITR 218 (P&H) wherein it has been held that the provisions of Section 14A of the Act are not applicable where the securities are held as stock-in-trade. He also relied on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT: [2018] 402 ITR 640 and submitted that by

following the aforesaid judgment, additions made under Section 14A of the Act read with Rule 8D of the Rules have been deleted by the Tribunal in a number of cases. In addition, referring to Ground No. 4 raised in the present appeal, the Ld. Authorised Representative for the Appellant submitted that no disallowance could be made in the case of the Appellant as interest free funds far exceeded the investments made by the Appellant in securities earning tax free income as per the judgment of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT: [2021] 438 ITR 1 (SC).

6. Per contra, Ld. Departmental Representative relied upon paragraph 12 and 13 of the order passed by CIT(A) and submitted that the Hon'ble Supreme Court has in the case of Maxopp Investment Ltd. (supra) clearly held that provisions of Section 14A of the Act read with Rule 8D of the Rules shall apply even in case of an assessee holding share as stock-in-trade. The CIT(A) has followed the aforesaid judgment of the Hon'ble Supreme Court and therefore, the same should be sustained.
7. We have considered the rival submissions and perused the material on record. On behalf of the Appellant reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of PCIT vs. State Bank of Patiala (supra). In that case the Assessing Officer allocated expenses of INR 40.72 Crores as the expenses incurred for earning exempt income of INR 12.20 Crores. Therefore, the Assessing Officer made disallowance under Section 14A of the Act but restricted the same to INR 12.20 Crores being the amount of exempt income earned by the assessee. In appeal before CIT(A), after issuing

notice of enhancement under Section 251 of the Act, the CIT(A) made a disallowance of INR 40.72 Crores under Section 14A of the Act read with Rule 8D of the Rules holding that the assessing officer had wrongly restricted the disallowance to the amount of exempt income. In appeal preferred by the assessee before the Tribunal, the Tribunal deleted the entire addition/disallowance made under Section 14A of the Act holding that the securities were held as stock-in-trade and therefore, provisions of Section 14A of the Act were not attracted. The Hon'ble Punjab & Haryana High Court dismissed the appeal of the Revenue by applying the theory of dominant intention vide judgment dated 30.01.2017 [reported in 391 ITR 218 (P&H)] and confirmed the aforesaid order of the Tribunal. While deciding a batch of Special Leave Petitions filed before the Hon'ble Supreme Court vide judgment dated 12.02.2018, passed in the case of Maxopp Investment Ltd. (supra), the Hon'ble Supreme Court considered the judgment of the Hon'ble Punjab & Haryana High Court and held as under:

"36. There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as 'investment, particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.

37. This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be

chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assesseees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

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 & 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.”(Emphasis Supplied)

8. On perusal of the above, it is clear that the Hon'ble Supreme Court clarified that earning of exempt dividend income in respect of shares held as stock-in-trade, though incidental or by quirk of fate, triggers the provisions of Section 14A of the Act. Therefore, based upon the theory of apportionment of expenditure between taxable and non-taxable income as held

by the Hon'ble Supreme Court in the case of CIT Vs. Walfort Share and Stock Brokers P. Ltd [2010] 326 ITR 1 (SC), the expenditure incurred in acquiring such shares which are held as stock-in-trade would have to be apportioned. The Hon'ble Supreme Court discarded the theory of dominant intention adopted by the Hon'ble Punjab & Haryana High Court. However, the Hon'ble Supreme Court held that the decision arrived at by the Hon'ble Punjab & Haryana High Court was correct on facts as the Assessing Officer had restricted the disallowance under Section 14A of the Act to the amount of exempt income whereas the CIT(A) had erred in disallowing the entire amount of expenditure despite the apportionment expenditure having been done by the Assessing Officer.

9. We note that the CIT(A) has, after taking into consideration paragraph 39 and 40 of the judgment of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra), concluded as under:

"13. Thus it is very clear from the above decision in Maxopp Investment Ltd [2018] 91 taxmann.com 154 (SC) that the Honble Supreme Court did not agree with the 'dominant intention test applied by the Honble Punjab & Haryana High Court in case of the Appellant and held that irrespective of the intention of holding equity shares either as strategic investment or as stock in trade, the provisions of section 14A of the Act shall apply. In view of above, the provisions of Section 14A of the Act is very much applicable in the case of the assessee and expenditure in relation to exempt income is liable for disallowance u/s 14A. Therefore, the action of the AO in invoking provisions of Section 14A of the Act and applying Rule 8D of the IT Rules for working out disallowance of INR 2,11,33,541/- for the AY 2015-16 is found to be in accordance with law and hence, upheld. Consequently, the related grounds of appeal 1 & 1,1 of the appellant fail" (Emphasis Supplied)

10. We do not find any infirmity in the aforesaid conclusion drawn by

CIT(A) that irrespective of the intention of holding shares as investment or stock-in-trade, the provisions of Section 14A of the Act would be attracted in case exempt income is earned in respect of such shares. Accordingly, we hold that as per the judgment of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) provisions of Section 14A of the Act would apply even in case were exempt dividend income is earned in respect of shares held as stock-in-trade. Our view draws support from the decision of the Tribunal in the case of DCIT vs. M/s State Bank of India (Successor to State Bank of Bikaner & Jaipur [ITA No. 033/Mum/2019 & ITA No. 2873/Mum/2019, dated 29.09.2022]. In view of the aforesaid, Ground No. 1 to 3 raised by the Appellant are dismissed.

11. As regards Ground No. 4 we note that the Appellant had contended before CIT(A) that no disallowance under Section 14A of the Act can be made in the case of the Appellant as the interest free funds of the Appellant amounting to INR 60,190.91 Crores were far and excess of the investments of INR 305.76 Crores is made in securities earning tax free income. The aforesaid facts have not been controverted by the CIT(A) who has reproduced the written submissions, dated 14.10.2021, filed by the Appellant in its order. At page 7 of 16 of the order passed by the CIT(A), paragraph 1.7 of the aforesaid submissions has been reproduced wherein the aforesaid contention raised by the Appellant have been recorded. We note that Hon'ble Supreme Court had, in the case of South Indian Bank (supra), held as under:

"27. The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax-free bonds/securities which yield tax-free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favouring the assessees. "(Emphasis Supplied)

12. Thus, where interest free own funds available with an assessee exceed the investments, proportionate disallowance of interest could not have been made by under the provisions of Section 14A of the Act to the same effect is the judgment of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. Vs. Deputy Commissioner of Income-Tax -2(3), Mumbai: [2016] 67 Taxmann.com 42 (Bombay). We note that entire disallowance of INR 2,11,33,541/- made by the Assessing Officer under Section 14A of the Act has been computed under Rule 8D(2)(ii) of the Rules.
13. In view of the above judgments, since in the present case the interest free own funds are far exceed the investment amount, the addition of INR 2,11,33,541/- made by the Assessing Officer as per Section 14A of the Act read with Rule 8D(ii) of the Rules is deleted. Ground No. 4 raised by the Appellant is allowed.
14. In the result, the present appeal is partly allowed.

Order pronounced on 10.01.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 10.01.2023
Alindra, PS

आदेश की 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