IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 268/Kol/2023
Assessment Year : 2018-19

ACIT, Circle-29, Kolkata	Vs.	M/s. Steel Authority of India Employees Co-operative Credit Society Limited PAN: AADAS 9699 B
Appellant		Respondent

Date of Hearing	15.05.2023
Date of Pronouncement	09.08.2023
For the Assessee	Shri S.K. Tulsiyan, Advocate & Mrs. Puja Somani, CA
For the Revenue	Smt. Ranu Biswas, Addl. CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the revenue against the order dated 20.12.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The revenue has raised the following grounds of appeal:

"1. That the Ld. CIT(A) has erred in not considering the fact that assessee made long term investments which are not related to business activity of assessee and income from the same are not allowable for deduction u/s 80P of the Act and as such the AO was right in proportionately disallowing the deduction claimed by assessee.

2. That the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A of the Act during scrutiny assessment in contravention to the provisions of CBDT Circular No. 5/2014.

3. That the Ld. CIT(A) has erred in relying upon the decision of Ld. ITAT, Kolkata for previous years of the assessee, while deleting the disallowance made u/s 14A of the Act, when the issue has not reached it's finality and Revenue's appeal before High Court on same

issue for the A.Y. 2012-13, 2013-14 and 2014-15 is pending for adjudication.

4. That the Ld. CIT(A) while adjudicating the disallowance of Bonus payment has erred in accepting new documents/ evidences during the appellate proceedings and deciding the issue on the basis of such new evidence without giving opportunity to the AO, in violation of Rule 46A of the I T Rule, 1962.

5. That the appellant humbly craves leave to add, amend, alter, withdraw, delete or substitute all or any of the ground(s) of appeal at the time of hearing."

2. At the outset, it was pointed out that the appeal of the Revenue in ITA No. 268/KOL/2023 for AY 2018-19 is delayed by 39 days. After hearing rival parties and considering the fact that the delay by the Revenue in filing this appeal of 39 days was stated to have happened due to administrative reasons. We note that the Revenue is a Government Department manned by officers of Indian Revenue Services and the files & records are subject to various checks and balances and have to pass through several stages. Considering the fact, the minor delay of 39 days is condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee is a Co-operative Credit Society and registered under Multi-State Co-operative Societies Act, 2002. The assessee is engaged in the business of providing credit facilities and granting of loan to its members and filed its return of income for the A.Y. 2018-19 on 13.08.2018 by declaring total income at Nil after claiming eligible deduction u/s 80P of the Act. The case of the assessee was selected for scrutiny and notices were issued u/s 143(2) & 142(1) of the Act. However, no one appeared on behalf of the assessee, therefore, the AO

passed an ex-parte order u/s 144 of the Act without hearing the assessee and assessed the total income of Rs. 2,99,60,362/- as under:

> *"Total income as ITR Rs. Nil*
> *(a) Addition u/s 80P of the Act Rs. 52,91,087/-*
> *(b) Deduction u/s 36(1)(ii) in respect of bonus Rs. 4,64,000/- commission paid to employees disallowed*
> *(c) Addition on account of disallowance u/s 14A Rs. 2,42,05,275/-. Total income assessed Rs. 2,99,60,362/-."*

4. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was allowed by observing as follows:

> *"7.1. The argument of the appellant in this regard, is that, there is accepted position in this regard by the department in the past assessment years. I have carefully examined the orders by CIT(A) for earlier in this regard. In the appellate order dated 28-02-2020 mentioned by the appellant, this issue is found as ground no. 4 of that appeal. Relevant portion of the order of CIT(A) is produced herein below:*
> *In connection to the above it may he noted that the AO has not disputed that the assessee is a credit co-op society eligible for deduction u/s 80P(2)(a)(i) of the Act on the whole of the amount of profits and gains of the business of providing credit facilities to its members.*
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> *In the respective assessment order (For AY 2008-09, 2012-13, 2013-14 & 2014-15) the AO has calculated the deduction u/s 80P in respect of net income in the area of providing credit facilities to the members by applying his own formula.*
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> *Attention, at the juncture is invited to the computation of deduction u/s 80P of the Act as arrived at by the assessee (following the same method as applied for the AY 2011-12 which was accepted as it is by the CIT(A) in his appellate order dated 15-07-2016 (Refer Para 9.2.2) by considering the income attributable to the business of providing the credit facilities for the respective AYs 2008-09, 2012-13 & 2014-15 as enclosed at page No 179-186 of the P/b relevant extract of the said appellate order*

dated 15-07-2016 for the Ay 2011-12 (enclosed at page Nos 145-178 of the P/b) reproduced as under:

The Ld AR taking into consideration only the income from providing of credit facilities to the members has arrived at quantum at Rs 1,50,40,714/- as being eligible for deduction u/s 80P.

I have gone through the details computation and I concur.

The deduction u/s 80P will be at Rs 1,50,40,714/- I have examined the submissions or the assessee, the assessment order and the appellate order of my predecessor for the ay 2011-12. The deduction u/s 8OP has been computed by the AO in the assessment order based on this treatment of the transaction in shares and mutual funds as investments and therefore allocating expenses related to the business income to the activity of granting of loans to members as is covered u/s 80P of the Act. However in view of the my decision for Ground No 1 for Ay 2008-09 and 2012-13 and Gr Nos 1 & 2 for AY 2013-14 and 2014-15, the AO is directed to recomputed deduction u/s 80P after taking into account the allocation of expenses including interest for the computation of business income as has been accepted in this appellate order. The AO will allow deduction u/s 80P of the Act on such recomputed income earned from granting of loans to members as per law. The ground is allowed for statistical purposes.

7.2. From the above, it is clear that. the issue of eligible deduction u/s 80P has been subject matter of appeal for earlier assessment years too and the then CIT(A) have given clear finding in this regard. Considering the ratio in the case of Radhasoami Satsang v. CIT [1992] 193 ITR 321 wherein Hon'ble SC held that:
"Strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

7.3. As seen above and discussed, the issue of eligible deduction u/s 80P has been subject matter of appeal before and the erstwhile CIT(A) have decided the matter and have allowed the appeal. Hence, as directed by the ClTA) in his order

dated 28-2-2020, for re-computation of deduction u/s 80P for AY 2008-09, 2012-13, 2013-14 & 2014-15 and respectfully following the ratio of the SC decision, the AO is directed to follow the method of allowance of deduction u/s 80P as directed and followed for AYs mentioned herein above and follow the same for AY 2018-19 also. With the direction, accordingly this ground of the assessee is allowed for statistical purpose.

8. With regards to grounds no.6 & 7 being disallowance of ex gratia paid to the employees, AO made the disallowance of Deduction in respect of bonus or commission paid is allowable u/s 36(1)(ii)of the Income Tax Act 1961, if any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission; Rs.4,64,000/- was otherwise payable to the employee as profit or dividend and thus not an allowable deduction u/s 36 of the Income Tax Act 1961. However, on perusal of details filed by the appellant including that of office order passed subsequent to Board of Directors meeting, it is seen that the amount of Rs.4,64,000/- is ex gratia paid to employees and not bonus or commission as stated by the AO. Hence this sum is allowable u/s 36(1)(ii) of the IT Act and accordingly this ground is allowed.

9. With regards grounds of appeal no.8 being addition made u/s14A r.w. Rule 8D, it is seen that in appellants own case, ITAT B Bench Kolkata in I.T.A. No. 425/Kol/2020 AY:2008-09 & ITA Nos. 426 to 428/Kol/2020, AYs. 2012-13 to 2014-15 vide order dated 18-4-2022 has held as under:

"From the above discussion, the ratio decidendi which emerges is that, it was qua the assessee's covered by the Board Circular No. 18 of 2015 viz, Co-operative societies & banks (to whom Section 80P was applicable), that the Hon'ble Supreme Court (supra) held that the provisions of disallowance u/s 14A cannot be applied to such assessee's. In the facts of the present case, the assessee is also a cooperative society which is engaged in the business of providing financial assistance to its members and is eligible for deduction u/s 80P of the Act. In our considered view therefore the above the judgment rendered by the Supreme Court in case of State Bank of Patiala (supra) and South Indian Bank Ltd Vs CIT (supra) is squarely applicable to the facts of the present case. We thus hold that the provisions of Section14A cannot be applied to the assessee cooperative society and accordingly the AO is directed to delete the disallowance

so made u/s 14A of the Act. Accordingly, the second and third grounds of appeal of the revenue stands dismissed and this ground in cross appeals of the assessee is allowed."

9.1. Since the above decision pertains to the same issue and is jurisdictional ITAT, respectfully following the same, the addition made u/s 14A r.w. Rule 8D is deleted.

10. In the result, the appeal of the appellant is allowed."

5. Aggrieved by the above order, revenue is in appeal raising various grounds of appeal before us. The first ground of appeal is that ld. CIT(A) has erred in law by no considering the fact that assessee made long term investment which are not related the business activity of assessee and income from the same are not allowable for deduction u/s 80P of the Act. Therefore, view taken by the AO was correct by proportionately disallowing the deduction claimed by the assessee. The ld. DR to substantiate his argument, he brought to our notice to the fact that the assessment order framed by the AO in which the ld. AO noted that assessee has given advance to its members amounting to Rs. 99,32,90,310/- and made a long term investment amounting to Rs. 230,88,71,073/- under the head other income accordingly from the above facts, it is clear that assessee earned income from two sources. However, the claim of the assessee which was made u/s 80P of the Act as long term investment is not allowable as deduction u/s 80P of the Act. Therefore, the calculation made by the AO in this respect remained to be sustained.

6. On the other hand, ld. DR supported the decision rendered by the ld. CIT(A) to substantiate his argument, ld. AR placed before us that the order of ITA No. 425/Kol/2020 dated

18.04.2022 in assessee's own case for the assessment year 2008-09, 2012-13,2013-14 and 2014-15 were on the same issues, the Tribunal has passed an order in favour of assessee by observing as follows:

> *"6. It is also noted that the Ld. CIT(A) has examined the adverse observations of the AO that the ratio of opening stock, purchase, sales and closing stock were not commensurate to show that the activities of the assessee were in the nature of business income. The Ld. CIT(A) after examining this issue as pointed out by the AO repelled the same and found that "I have carefully examined this aspect and I find that the ratio of sales to closing stock of shares for the AY 2008-09 is 1.145 for assessment year 2012-13 the ratio of sales to closing stock of shares 3.666 for assessment year 2013-14 the ratio of sales to closing stock of shares is 3.921 and of Mutual funds is 1.144 and for assessment year 2014-15 the ratio of sales to closing stock of shares is 3.462 and of Mutual fund is 1.984." After making this finding of fact the Ld. CIT(A) held that the ratio clearly shows that the turnover of the assessee as compared to the closing stock in each of the years are high and shows the clear pattern of regular trading in shares and mutual funds in an organized manner which is indicative of an activity of the business rather than investment. Thus, it is seen that the Ld. CIT(A) while holding the assessee as a trader in mutual fund as well as shares, reversed the decision of the AO by observing as under:*
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> > *"I have considered the assessment order, the submissions of the assessee along with the paper book filed as well as the orders passed by the CIT(A) for the assessment years 2009-10 and 2011-12. An examination of the assessment order shows that one of the principle reasons for treating the income from Shares and Mutual Funds as Capital Gains by the AO was on the alleged ground that the ratio of Opening Stock. Purchases, sales and Closing Stock were not commensurate to show that the activities of the assessee were in the nature of business income. I have carefully examined this aspect and I find that the ratio of sales to closing stock of shares for the Ay 2008-09 is 1.145 for assessment year 2012-13 the ratio of sales to closing stock of shares is 3.666, for assessment year 2013-14 the ratio of sales to closing stock of shares is 3.921 and of Mutual funds is 1.144 and for assessment year 2014-15 the ratio of sales to closing stock of shares is 3.462 and of Mutual fund is 1.984. These ratios clearly show that the turnover of the assessee as compared to the closing stock in each of the years is considerably high and shows a clear pattern of regular trading in shares and mutual funds in an organized manner which is indicative of an activity of business rather than investment. It is also evident that*

the assessee has purchased shares and mutual funds out of borrowed funds on which it pays interest and therefore, this also goes to show that the assessee is involved in a business activity since an investor usually does not invest borrowed funds for the purpose of investments or majority of the funds for investments are from investor's own fund. This issue was also dealt with by my predecessor-in-office in his Appellate order for assessment year 2011-12 at page 14 of his order wherein after analyzing the contentions of the assessee my predecessor-in-office held that the activity of purchase and sale of shares by the assessee was in the nature of business and was therefore, to be accordingly treated for the purpose of computation of income of the assessee. It has also been brought to my notice that the AO did not go in further appeal against the said order passed by my predecessor-in-office and the view taken by my predecessor has therefore become final. Once the view that the assessee is a trader in shares and mutual funds is accepted by the AO then on similar facts without any material change, the Ld. AO cannot take a different view in other years as has been held by the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT (1992) reported in 193 ITR 321. This view is also fortified by the CBDT Circular No. 6/2016 dated 29.02.2016 wherein the CBDT has instructed the AO to accept the stand of an assessee in subsequent years once the assessee has taken a stand in respect of treatment of trading in shares and mutual funds as either business income or capital gains. In view of the above, I direct the AO to treat the income of the assessee from shares and mutual funds under the head 'Business Income'.

7. It is true that principles of res judicata is not applicable in income tax proceedings. However in this case, we note that the revenue has consistently accepted the stand of the assessee that it is a trader of shares and mutual funds from AYs 2005-06 to 2007-08 and the AO deviated only in AY 2008-09 which has been reversed by the Ld. CIT(A) by passing the impugned order. Meanwhile, the AO had again treated the assessee's action as capital gain from investments for AY 2011-12 which was reversed by the Ld. CIT(A) and held it as business income which action of the Ld. CIT(A) has not been challenged by the AO, so the finding of Ld CIT(A) that assessee is a trader of of shares and mutual funds crystallises. Therefore, applying the principle of rule of consistency as held by the Hon'ble Supreme Court in the case of Radhesoami Satsang Vs. CIT (1992) 193 ITR 321 (SC) since the fundamental facts permeating in the earlier years have not changed, and when certain position has been accepted by the department, then without any change in law, the consistent position/finding cannot be

allowed to be changed. The Hon'ble Supreme Court has held and observed as under:

"We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following but where a fundamental aspect permeating through the different assessment years as been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, it was in support of the assessee-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12 of the Income-tax Act of 1961.

Counsel for the Revenue had told us that the facts of this case being very special, nothing should be said in a manner which would have general application. We are inclined to accept this submission and would like to state in clear terms that the decision is confined to the facts of the case and may not be treated as an authority on aspects which have been decided for general application."

8. In the light of the facts and circumstances as afore-stated, we sustain the order of the Ld. CIT(A) and dismiss this ground of appeal of the revenue."

7. The view taken by the Tribunal in ITA No. 425/Kol/2020 (supra), subsequently affirmed by the Hon'ble Jurisdictional High Court in ITAT/62/2023 vide order dated 10.042023. Therefore, the instant issue raised by revenue may be rejected by this Tribunal in view of the Jurisdictional High Court has passed an order in favour of the assessee in respect of the instant issue.

8. We after hearing the rival submission of the parties and perusing the material available on record and after going through the judgment rendered by the Co-ordinate Bench in assessee's own case in ITA No. 425/Kol/2020 and subsequently confirmed by the Jurisdictional High Court in favour of the assessee. Therefore, the instant issue raised by revenue is hereby dismissed by directing the AO to delete the addition made by him while passing the assessment order.

9. Now we take up ground no. 2 & 3 raised by the revenue. Since both issues are inter connected, therefore, clubbed together for adjudication. The ld. DR states that the ld. CIT(A) has erred in deleting the disallowance made by the AO u/s 14A of the Act during the assessment proceeding which is in contravention to the provisions of CBDT's Circular No. 5/2014 and ld. CIT(A) further erred in law by relying upon the decision of ITAT Kolkata for the previous year of assessee's own case while deleting the disallowance made u/s 14A of the Act when the issue has not reached a finality and revenue's appeal is still pending before the Hon'ble High Court on the same issue for disposal. Therefore, impugned order may be dismissed by sustaining the order of ld. AO on this issue

10. On the other hand, ld. AR contended that the issue involved in the instant case is covered in favour of the assessee as per the order passed by Hon'ble ITAT in assessee's own case in ITA No. 425/Kol/2020 by stating as follows:

> *"9. The second and third grounds of appeal of the revenue and the cross appeals of the assessee are against the action of the Ld. CIT(A) in interfering with the action of the AO wherein he has disallowed*

expenditure by invoking section 14A of the Income-tax Act, 1961 (hereinafter referred to as the "Act") read with Rule 8D(2)(ii) & (iii) of the Income-tax Rules, 1962 (hereinafter referred to as the "Rules"). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to hold as under:

> *"I have examined the contention of the assessee and the assessee's reliance on the decision of the Hon'ble Apex court in the case of Maxopp Investment Ltd. Vs. CIT reported in 402 ITR 640 (SC). On a reading of the decision of the Hon'ble Supreme court, it is not discernible that any such view has been accepted by the Hon'ble Supreme court that the provisions of section 14A, read with Rule 8D are not applicable in the case of shares held as stock in trade. It is an admitted fact that dividend has been earned on shares and mutual funds held by the assessee during the year. Once an assessee earns exempt income then the provisions of section 14A automatically become applicable and disallowance has to be computed by taking into account Rule 8D of the Income Tax Rules. Therefore, I hold that the AO has rightly invoked the provisions of section 14A, read with Rule 8D in the case of the assessee. However, the AO has computed the disallowance of interest and expenses by taking into account the entire interest expenses of the assessee in the formula for the purpose of rule 8D. However, only the amount of interest and expenses which have been allocated for the purpose computing the business income in shares and mutual funds can be considered in the formula for the purpose of rule 8D. Therefore, the AO is directed to recomputed the disallowance u/s. 14A, read with Rule 8D of the I. T. rules by only considering the figures of interest and other related expenses as have been allocated for the purpose of computation of Business Income in the first ground of appeal as decided earlier in this appellate order. The AO is directed accordingly. The grounds are partly allowed."*

10. Aggrieved, the revenue as well as the assessee both are in appeal before us

11. We have heard the rival submissions and perused the material placed on record. The Ld. AR submitted that the assessee is a dealer in shares and the income earned thereon was assessed as "Business Income". According to him, the dividend derived in the course of share trading is incidental to the principal business which is to earn profit. He thus contended that the provisions of Section 14A of the Act and Rule 8D cannot be applied in the given facts of the present case. Per contra the Ld. DR submitted that merely because the assessee was a dealer in shares, it could not take a stand that expenditure incurred in connection with earning of tax free income was not disallowable u/s

14A of the Act. Both the parties relied on the findings given by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd Vs CIT (402 ITR 640) which had considered the issue of disallowability of the expenditure incurred in the assessment of an assessee who derived exempt dividend income from shares held as stock-in-trade.

12. In order to address the issue at hand, it is first relevant to examine the findings given by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd Vs CIT (supra). It was brought to our notice that Hon'ble Supreme Court in their decision dated 12.02.2018 had decided a large number of appeals which inter alia included Maxopp Investment Ltd (supra) as well as appeal filed by the Revenue in the case of State Bank of Patiala, decided by the Hon'ble Punjab & Haryana High Court reported in 391 ITR 218 wherein it was held that provisions of Section 14A cannot be applied to shares & securities held as 'stock-in-trade' by banking companies in the course of their banking business. It is noted that Revenue's appeal in the case of State Bank of Patiala was dismissed by the Hon'ble Supreme Court, by holding 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.*
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> *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 assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

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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)

13. We thus note that although the Hon'ble Supreme Court did observe in the case of a dealer in shares, earning dividend income from its stock-in-trade, may expose to the rigors of Section 14A of the Act, but at the same time we find merit in the Ld. AR's submissions that in the above judgment, the Hon'ble Supreme Court also extensively dealt with this issue in the Revenue's appeal in the case of a banking company, State Bank of Patiala (supra) and dismissed the same, wherein the High Court had held that, since the banking companies in the course of carrying on their banking business were required to hold shares & securities, the expenses were incurred in connection with such banking business and accordingly no disallowance was warranted u/s 14A of the Act. For this, the Hon'ble High Court had taken note of the Board's Circular No. 18 dated 02.11.2015 issued in relation to cooperative societies/banking companies and had also relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs Nawanshahar Central Co-operative Bank Ltd (289 ITR 6).

14. We note that this particular proposition laid down in the above judgment (supra), was reiterated by the Hon'ble Supreme Court in their decision rendered in the case of another banking company, South Indian Bank Ltd Vs CIT (438 ITR 1) also rendered of a banking company. The Hon'ble Supreme Court took note of the Board's Circular No. 18 dated 02.11.2015 issued in the context of cooperative societies & banking companies, and their earlier judgment in the case of CIT Vs Nawanshahar Central Co-operative Bank Ltd (supra), and it held that the income arising from trading in securities was attributable to banking business of the assessee and therefore the expenses were also relatable to the business of banking, and hence provisions of Section 14A were not attracted in case of banking companies. The relevant findings of the Hon'ble Apex Court is as follows:

> *25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 2-11-2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 160 Taxman 48/289 ITR 6 (SC), wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business. The Punjab and Haryana High Court, in the case of Pr CIT v. State Bank of Patiala [2017] 88 taxmann.com 667/393 ITR 476 (Punj. & Har.), while adverting to the CBDT Circular, concluded correctly that*

shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why section 14A would not be attracted to such income. (emphasis supplied)

15. From the above discussion, the ratio decidendi which emerges is that, it was qua the assessee's covered by the Board Circular No. 18 of 2015 viz., cooperative societies & banks (to whom Section 80P was applicable), that the Hon'ble Supreme Court (supra) held that the provisions of disallowance u/s 14A cannot be applied to such assessee's. In the facts of the present case, the assessee is also a cooperative society which is engaged in the business of providing financial assistance to its members and is eligible for deduction u/s 80P of the Act. In our considered view therefore the above the judgment rendered by the Supreme Court in case of State Bank of Patiala (supra) and South Indian Bank Ltd Vs CIT (supra) is squarely applicable to the facts of the present case. We thus hold that the provisions of Section 14A cannot be applied to the assessee cooperative society and accordingly the AO is directed to delete the disallowance so made u/s 14A of the Act. Accordingly, the second and third grounds of appeal of the revenue stands dismissed and the ground in cross appeals of the assessee is allowed."

11. Subsequently, Hon'ble Jurisdictional High Court also affirmed the view taken by the ITAT by confirming in ITAT/62/2023 order dated 10.04.2023 in favour of the assessee. Therefore, ground no. 2 & 3 taken by the revenue are needed to be dismissed by the Tribunal in view of the order passed by the Hon'ble Jurisdictional High Court in favour of the assessee.

12. We after hearing the rival submission of the parties and following the decision rendered by this Tribunal in assessee's own case in ITA No. 425/Kol/2022 and following the decision of Hon'ble Jurisdictional High Court on the same issue in ITAT/62/2023 wherein the present issue is covered in favour of the assessee. Accordingly, grounds taken by the revenue is hereby

dismissed and direct the AO to delete the addition made in the hands of assessee.

13. The ground no. 4 taken by the revenue by stating that ld. CIT(A) erred in adjudicating disallowance of bonus payment by accepting the new documents/evidence filed by assessee during the appellate proceedings and decided the issue on the basis of the said new evidence without giving proper opportunity to the AO which is in contravention of Rule 46A of the IT Rules, 1962. Therefore, the impugned order on this issue may be set aside by sustaining the order passed by ld. AO.

14. On this aspect, ld. AR submitted that a sum of Rs. 4,64,000/- was disallowed by the AO which was paid to the employees as bonus or commission for services rendered during the assessment year in question. However, the ld. AR stated before this Tribunal that Rs. 4,46,000/- has made by the assessee to its employee as an ex gratia amount and not as bonus or commission as alleged by the AO. Therefore, the alleged sum is allowable u/s 36(1)(ii) of the Act. Further to substantiate his argument, ld. AR of the assessee placed before us the copy of office order for payment of ex gratia to its employee by placing it at page 68 of its paper book filed before us to prove the facts of the case that payments were made to its employee as an ex gratia payment for the assessment year 2017-18.

15. We after going through the submission made by the parties and on perusal of the supported document placed before us, we find that the instant issue already decided by ld. CIT(A) by stating that amount of Rs. 4,64,000/- was paid towards ex gratia to its employees and not as bonus or commission as stated by AO in his

assessment order passed u/s 144 of the Act and even before us the assessee has produced the copy of office order dated 20.09.2018 to prove the fact that the alleged payment of Rs. 4,64,000/- was made to its employee as an ex gratia payment and not for bonus or commission as alleged by the ld. AO in the assessment order. Therefore, the instant ground taken by the revenue is also hereby dismissed and we direct the AO to delete such addition made in the hands of assessee.

16. In the result, the appeal of the revenue is hereby dismissed.

Order pronounced in the open court on 09.08.2023.

Sd/-	Sd/-
(Manish Borad) Accountant Member	(Sonjoy Sarma) Judicial Member

Dated: 09.08.2023
Biswajit

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-29, Kolkata
2. Respondent – M/s. Steel Authority of India Employees Co-operative Credit Society Limited, 12, Ispat Co-operative House, Charu Chandra Place East, Ispat Co-operative House, Charu Market, Kolkata-700033.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata