

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 8688/Del/2019
(Assessment Year: 2016-17)

ACIT,
Special Range-7,
New Delhi

Vs. Punjab and Sind Bank,
Accounts & Audit
Department, Bank
House 1st Floor, 21,
Rajendra Place, New
Delhi

(Appellant)

(Respondent)

PAN: AAACP1206G

Assessee by :
Revenue by:

Shri Vivek Gupta, Adv
Ms. Sarita Kumari, CIT DR

Date of Hearing 14/11/2023
Date of pronouncement 07/02/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.8688/Del/2019 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-7, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10355/350/CIT(A)-7/2018-19, dated 19.08.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.12.2018 by the Assessing Officer, ACIT, Circle-20(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The revenue has raised the following grounds of appeal before us:-

"1. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the fact that the assessee was supposed to increase or decrease the revaluation reserve only and not to debit to profit and loss a/c the notional change in the value of the securities.*

2. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the fact that the assessee is claiming double deduction on the notional change in value of securities by debiting the same to profit and account and also reducing the value of closing stock of securities at the end of the year.*

3. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the fact that the reduced value of closing stock of outstanding securities for the current financial year becomes the opening stock of securities for the next financial year at the same reduced price amounting to double deduction claimed by the assessee as depreciation on investment is debited to profit and loss account.*

4. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the issue that the additional contribution to pension funds does not have a statutory claim despite the fact that the additional contribution do not confirm to Rule 87 & 88 r.w.s 36(1)(iv) of I.T. Act, 1961.*

5. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the issue that the additional contribution is different from annual contribution and hence the additional contribution has no legal sanctity.*

6. *Whether in facts and circumstances of the case the CIT(A) has erred in not appreciating the issue that the assessee bank has categorized the investment portfolio and has earned exempt income which has not been disputed.*

7. *Whether in facts and circumstances of the case the CIT(A) has erred in not dealing with the fact that the assessee has not proportionately disallowed expenses in respect of exempt income as per decision of Hon'ble Delhi High Court in the case of CIT vs. JANSAMPARK ADVERTISING AND MARKETING (P) LTD.*

8. *Whether in facts and circumstances of the case the CIT(A) has erred in accepting the contention of the assessee that no expense has been incurred in respect of exempt income even though the investment made and the exempt income earned is true and undisputed which is beyond human probabilities as per the decision of the Hon'ble Apex Court in the case of Durga Prasad More and McDowells."*

3. We have heard the rival submissions and perused the materials available on record. At the outset, the Id. AR before us stated that all the grounds raised by the revenue are covered by the decision of this Tribunal and the Hon'ble Jurisdictional High Court in assessee's own case in favour of the assessee. Per Contra, the Id. DR vehemently relied on the order of the Id. AO. We find that the Ground Nos. 1,2 & 3 raised by the revenue are challenging the deletion of Depreciation on Securities. This issue is covered by the order of this Tribunal in assessee's own case in ITA No. 631/Del/2019 dated 5.1.2022 . The relevant portion of the order of this Tribunal is reproduced hereunder:-

"4. Ground No.1 is with respect to the deletion on account of disallowance of depreciation on securities.

5. During the course of assessment proceedings, AO noticed that assessee had claimed the depreciation on securities amounting to Rs.372,70,70,520/-. The assessee was asked to justify the claim of depreciation to which assessee inter alia submitted that for the income-tax purpose, Bank was treating all securities irrespective of its category viz HTM, AFS & HFT in the books as 'Stock-in-Trade' consistently and it was as a generally accepted principle valued at "cost" or "market price" whichever is lower. It was further submitted that the classification and valuation of investment by Bank was made as per RBI's guidelines which were mandatory in nature. The submissions of the assessee was found acceptable to AO as he was of the view that since the investments have not been shown by assessee as 'Stock-in-Trade' and its resultant profits and sale were not enhanced by the value of depreciation in subsequent years when those investments were actually sold, the claim of assessee was not allowable. He accordingly denied the claim of depreciation amounting to Rs.372,70,70,520/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) noted that identical issue arose in assessee's own case in A.Y.s 2007-08, 2008-09, 2009-10, 2011-12, 2012-13 & 2013-14 and his predecessor have decided the issue in favour of the assessee. He, therefore following the decision of his predecessor, deleted the addition made by AO. Aggrieved by the order of CIT(A), Revenue is now before us.

7. Before us, at the outset, Learned AR submitted that identical issue of disallowance of depreciation arose in assessee's own case before the Hon'ble ITAT in A.Y. 2013-14 and the Hon'ble Tribunal vide order dated 12.07.2021 in ITA Nos.781 & 1208/Del/2018 had dismissed the appeal of the Revenue. He pointed to the relevant para 12 to 14 of the order. He therefore submitted that since the facts of the case for the year under consideration are identical to that of A.Y. 2013-14, no interference to the order of CIT(A) is called for.

8. Learned DR on the other hand did not controvert the submissions made by Learned AR but however supported the order of lower authorities.

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the deletion of addition of Rs.372,70,70,520/-. We find that identical issue arose before the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2013-14 and the Co-ordinate Bench of Tribunal, by following the order in assessee's own case for A.Y. 2011-12 & 2012-13, deleted the addition by observing as under:

"12. Coming to the other grounds of revenue's appeal in ITA No. 1208/Del/2018 ground No.1 relates to the deletion of the addition of Rs. 176307641/- made by the AO in respect of depreciation on securities.

13. We find that an identical issue was considered by this Tribunal in assessee's own case in A.Y.2011-12 and 2012-13 (supra). The relevant findings of the Tribunal read as under :-

8. We have perused the record and the case law relied upon by both the sides. It is an admitted fact that the assessee being a nationalized bank is governed by the Banking Regulation Act,

1949; that they are following mercantile system of accounting both for book keeping purpose as well as for tax purposes; that they have been valuing the stock-in-trade (investments) "at cost" in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment "at cost or market value, whichever is lower for income tax purposes; that it is an established rule of commercial practice and accountancy that closing stock can be valued at cost or market price, whichever is lower. It could be seen from the record that the question as to the reflection of the investments being stock in trade in the audit report, profit and loss account and the annual report with the question of the value of securities as embedded in the closing stock and the corresponding figure as becoming the opening stock in the subsequent year was adverted to India judicial precedents.

9. Further, as understood from the argument of the Ld. DR, her contention is that no opening stock or closing stock of securities was mentioned in the profit and loss account though the assessee had claimed their investment in securities as stock in trade; and that if the investments are stock in trade, it should be reflected in the return of income, audit report, profit and loss account and the annual report and the diminution of the value of securities will be embedded in the closing stock and the corresponding figure will become the opening stock in the subsequent assessment years. On this she submitted that when once the assessee reduces the depreciation and reaches a particular figure as the book value of the securities, then naturally when the securities were sold in the subsequent years the profit should be estimated with reference to the reduced value of the Scrip's in the earlier years, but however in the case of the assessee, cost of the security after reducing the same because of the depreciation was not changed or adjusted in the books resulting in the books reflecting the low profit and the resultant of less amount to tax.

10. Plea of the assessee, on the other hand, is that the treatment of the profit on sale of securities is two-fold. Firstly, the profit on sale of securities will be lower due to the nonattachment of cost of securities with deregulated appreciation claimed, but simultaneously at the second stage of the said transaction, claim of depreciation on securities for the year is also reduced to the extent of a community depreciation claimed earlier and resultantly the profit for the year is worked out correctly after taking account both into the folds of the transaction collectively.

11. On a careful consideration of the matter we are of the considered opinion that it is not the case of the Ld. Assessing officer that in this particular year in respect of any particular security such a thing had happened. It is not the case of the Ld. Assessing officer that with reference to any particular scrip there was depreciation and the loss was claimed in the earlier years as deduction but without showing the reduced value of the scrip as the opening value of the stock, on the sale of the scrip, the cost price but not the reduced price was taken as the cost of acquisition

and thereby any less amount was offered to tax. The entire edifice of the case of revenue is based on the theoretical suspicion of the Ld. Assessing officer that in as much as the assessee has not been showing in the balance sheet reduced value of the scrip but the cost price of the scrip as the value of the scrip, when the securities were sold it is the cost price of the scrip but not the reduced value of the scrip that was taken to estimate the profits and as a consequence of which the less amount has been offered to tax. It is a verifiable fact with reference to the sales of securities, if any, that took place during the year or earlier or subsequent years. Such an exercise has not been undertaken by the learned Assessing officer but merely basing on the figures reflected in the balance sheet which was prepared in accordance with the RBI guidelines, learned Assessing officer reached a conclusion that there was an escapement of income due to the preparation of the balance sheet in a particular way, as prescribed by the RBI.

12. If we appreciate the facts of this case in the light of the decision of the Hon'ble Apex Court in UCO Bank vs. CIT 240 ITR 355 (SC), it is clear that since the assessee has been maintaining its accounts on mercantile system, they are entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. All the aspects argued by the Ld. DR were considered by the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and were held in favour of the assessee. The decision in Southern Technologies Ltd (supra) has no application to the facts of the case.

13. There is consistency of the facts on this aspect quite for a long time and all possible arguments have come before the adjudicatory authorities. On a careful consideration of the matter in the light of the submissions on either side we are of the considered opinion that the question is now fully covered by the orders of the tribunal in assessee's own case for the earlier years, and while respectfully following the same, we hold the issue in favour of the assessee."

14. Respectfully following the decision of the coordinate bench (supra) ground No. 1 is dismissed."

10. Before us, no distinguishing feature in the facts of the present case and that of earlier year has been pointed out nor has Revenue placed any material on record to demonstrate that the order of Tribunal in assessee's own case for earlier years has been set aside/overruled or stayed by higher judicial forum. We therefore find no reason to interfere with the order of CIT(A) and thus the Ground of Revenue is dismissed."

3.1. Further the Hon'ble Jurisdictional High Court vide its order dated 18.9.2017 in ITA No. 602/2017 for Asst Year 2009-10 had dismissed the appeal of the revenue. Further it was submitted that the revenue did not prefer any further appeal before the Hon'ble Delhi High Court against the orders passed by this Tribunal for Asst Years 2011-12 and 2012-13 in respect of this issue.

3.2. In view of the above, the Ground Nos. 1,2 & 3 are hereby dismissed.

4. The Ground Nos. 4 & 5 raised by the revenue are challenging the deletion of disallowance on account of contribution to pension fund.

4.1. We have heard the rival submissions and perused the materials available on record. This issue is covered by the order of this Tribunal in assessee's own case in ITA No. 631/Del/2019 dated 5.1.2022 . The relevant portion of the order of this Tribunal is reproduced hereunder:-

"11. Ground No.2 & 4 are interconnected and with respect to the disallowance of contribution to Punjab & Sind Bank Employees Pension Fund Trust under Section 36(1)(iv) of the Act r.w. Rule 87 & 88 of the Income Tax Rule, 1962.

12. During the course of assessment proceedings, AO noticed that assessee had contributed to P&S Bank Employees Pension Fund Trust under the head regular and additional contribution. The assessee was asked to give the bifurcation of such payments and to justify the claim. Assessee made a detailed submissions which has been reproduced by the AO in his order. However AO did not agree with the submissions made by assessee as he was of the view that as per the provision of Section 36(1)(iv) r.w.r 87 & 88 of the Income Tax Rules, 1962, the contribution to employee's pension Fund can be allowed only as ordinary annual contribution or initial contribution. He was of the view that Rule 87 prescribed that contribution should be on definite percent of the salary of each employee for each year not exceeding 27% of salary of each employee for each year. He noted that as per working submitted by the assessee, the amount in excess of 27% of salary of pensioners and existing employees calculated employee wise worked out of Rs.68,93,90,105/- and Rs. 16,12,02,275/- respectively, aggregating to Rs.85,05,92,380/- which was not an allowable expenditure. He accordingly denied the claim and also added it for the purpose of computation of Book Profit u/s 115JB of the Act.

13. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) noted that identical issue arose in assessee's own case in earlier years and since the facts of the case for the year under consideration were identical to that of earlier years, he following the order of his predecessor, deleted the addition of Rs.85,05,92,380/-. With respect to the disallowance of contribution for the purpose of calculation of book profit u/s 115JB, he noted that since the main issue is decided in assessee's favour, the issue of adjustment to book profit u/s

15. Ground No.2 relates to the deletion of the disallowance made by the AO out of contribution to Punjab and Sind Bank Employees Pension Fund Trust.

16. A similar grievance was considered by this Tribunal in A.Y.2011-12 and 2012-13 (supra). The relevant findings of the Tribunal read as under-

"17. Ld. CIT(A) found that on similar issue in the Assessment year 2009-10, the issue was decided in of the assessee wherein it was held that similar expenses were allowed in the earlier assessments made under

section 143(3) of the Act and the decision of Delhi ITAT in the case of DCIT US Ranbaxy Laboratories Ltd (2009) 124 TTJ (Delhi) 771 wherein the expenses towards provision for pension fund were held to be allowable expenses and section 43B has no application, is applicable. The fact that the assessee had actually contributed/paid the amount to pension fund makes the case of the assessee even stronger. Following the above orders, Ld. CIT(A) held that the addition his score has to be deleted.

We do not find difference in the facts of the case from their earlier years to render the binding precedents followed by the Ld. CIT(A) inapplicable to the case in hand. In the absence of any change of facts and circumstances, we find it difficult to take a different view. In these circumstances, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal."

17. Respectfully following the decision of the coordinate Bench ground No.2 is dismissed."

17. Before us, no distinguishing feature in the facts of the present case and that of earlier year has been pointed out by Revenue nor has Revenue placed any material on record to demonstrate that the order of Tribunal in assessee's own case in earlier years has been set aside/overruled or stayed by higher judicial forum. We therefore find no reason to interfere with the order of CIT(A) and thus the Grounds of Revenue are dismissed."

4.2. Further the Hon'ble Jurisdictional High Court vide its order dated 16.10.2019 in ITA Nos. 904/2019 and 906/2019 for Asst Years 2011-12 and 2012-13 respectively had dismissed the appeals of the revenue on this issue.

4.3. In view of the above, the Ground Nos. 4 & 5 are hereby dismissed.

5. The Ground No. 6 raised by the revenue is challenging the deletion of disallowance of expenses u/s 14A of the Act under normal provisions of the Act.

5.1. We have heard the rival submissions and perused the materials available on record. This issue is covered by the order of this Tribunal in assessee's own case in ITA No. 631/Del/2019 dated 05.01.2022. The relevant portion of the order of this Tribunal is reproduced hereunder:-

"18. Ground No.3 & 5 are interconnected and with respect to the disallowance u/s 14A of the Act.

19. During the course of assessment proceedings, AO noticed that assessee had earned exempt income amounting to Rs.6,59,77,025/-. AO was therefore of the view that provision of Section 14A of the Act are applicable to the assessee. AO therefore asked the assessee to explain as to why expenses attributable to exempt income may not be disallowed u/s 14A of the Act. On the query of the

AO, assessee made the detailed submissions which are reproduced by the AO in the order. However, the submissions of the assessee were not found acceptable to AO. AO thereafter, by following the methodology prescribed under Rule 8D worked out the disallowance u/s 14A of the Act at Rs.20,49,20,000/- and made its addition. He also held that u/s 115JB of the Act, the amount of expenditure of Rs.2049.20 lakhs in relation to exempt income were required to be added to compute book profit u/s 115JB of the Act.

20. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that identical issue arose in assessee's own case in A.Y.s 2007-08, 2008-09, 2009-10, 2011-12, 2012-13 & 2013-14 and his predecessor had granted partial relief to the assessee. He following the order of his predecessor, upheld the disallowance to the extent of Rs.132.03 lakhs under Rule 8D(2)(iii) and deleted the disallowance to the extent of Rs.1917.17 made under Rule 8D(2)(ii) of the Income Tax Rule. He also held that the disallowance under Ruled 8D(2)(iii) needs to be sustained in the addition made u/s 115JB of the Act. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

21. Before us, Learned DR supported the order of AO.

22. Learned AR on the other hand submitted that identical issue arose in assessee's own case in A.Y. 2013-14 and Co-ordinate Bench of Tribunal in ITA Nos.781 & 1208/Del/2018 had decided the issue in assessee's favour by dismissing the appeal of the Revenue. He submitted that since the facts in the year under consideration are identical to that of earlier years, no interference to the order of CIT(A) is called for. He thus supported the order of CIT(A).

23. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance u/s 14A of the Act. We find that identical issue arose before the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2013-14 and the Co-ordinate Bench of Tribunal deleted the addition by following the order in assessee's own case for A.Y. 2011-12 & 2012-13. The relevant observation of the Tribunal reads as under:

"7. identical issues were considered and decided by this Tribunal in assessee's own case in ITA Nos. 1441 and 1442 /Del/2015 for A.Y.2011-12 and 2012-13 vide order dated 09.01.2019. The relevant findings of the coordinate bench read as under:

23. We have carefully perused the decision in the case of Maxopp investment Ltd versus CIT (2018) 91 taxman.com 154 (SC) wherein the Hon'ble Apex Court considered two cases wherein the question of predominant intent of investment in shares was pleaded, though on different facts, on the ground that the objective of investing in shares was not to earn the dividend income, but to either retain controlling interest over the company in which the investment was made or to earn the profit from trading in shares. The question was whether the disallowance under section 14 A of the Act could be invoked in the cases where exempt income was earned from shares held as "trading assets" or "stock in trade". The first case relates to Maxopp investment Ltd and the second case relates to the case of State Bank of Patiala. In

the case of Maxopp investment Ltd the assessee company is in the business of finance, investment and was dealing in shares and securities; that they held the shares and securities, partly as investments on the "capital account" and partly as "trading assets" for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd.; and that the profits resulting on the sale of shares held as trading assets were duly offered to tax as business income of the assessee. In the case of State Bank of Patiala the assessee has exempt income in the form of dividend was earned by the bank from securities held by as stock in trade. The Hon'ble Supreme Court was considering the question that has arisen under varied circumstances where the shares/stocks were purchased by a company for the purpose of gaining control over the said company or as "stock in trade", though incidentally income is also generated in the form of dividends as well.

"24. It was argued before the Hon'ble Apex Court that though incidentally income was also generated in the form of dividends, the dominant intention for purchasing the shares was not to earn the dividend income but to acquire and retain the controlling business in the company in which shares were invested, or for the purpose of trading in the shares as business activity.

25. After considering the entire case law on this aspect in the light of the peculiar facts involved in both the matters, the Hon'ble Apex Court vide paragraph No. 39 and 40 held as follows:-

39) In those cases, where shares are held as stock- in-trade, the main purpose is to trade in those shares and eam However, profits therefrom. 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 nontaxable income as held in Walfort Share and 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 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-intrade, 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."

26. It is, therefore, clear from the above observations of the Hon'ble Apex Court that depending upon the facts of each case, the expenditure incurred in acquiring the shares will have to be apportioned. Hon'ble Apex Court held that the tribunal and the Hon'ble High Court of Punjab and Haryana arrived at a correct conclusion by setting aside the disallowance under section 14 A of the Act in respect of the dividend earned on the shares held as stock in trade, because such shares were held during the business activity of the assessee and it is only by a quirk of fate that when the investee company declared dividend, those shares were held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits.

27. Hon'ble Apex Court made clear distinction of this case from the case of maxopp investment Ltd where the assessee knew that whenever dividend would be declared by the investee company such dividend would necessarily be earned by the assessee and assessee alone, and it would be in the common knowledge of the assessee that such shares would generate dividend income as well as and when such dividend income is generated that would be earned by the assessee only. Hon'ble Apex Court in unequivocal terms held that in contrast, where the shares are held as stock in trade, this may not be necessarily a situation and the main purpose was to liquidate those shares whenever the share price goes up in order to earn profits. Hon'ble Apex Court, therefore, while rejecting the theory of dominant purpose in making investment in shares whether it was

to acquire and retain controlling interest in the other company or to make profits out of the trading activity in such shares clearly made a clear distinction between the dividend earned in respect of the shares which were acquired by the assessee in their exercise to acquire and retain the controlling interest in the investee company, and the shares that were purchased for the purpose of liquidating those shares whenever the share price goes up, in order to earn profits. It is, therefore, clear that though not the dominant purpose of acquiring the shares is a relevant for the purpose of invoking the provisions under section 14 A of the Act, the shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with an intention to acquire and retain the controlling interest in the investee company.

28. We, therefore, while respectfully following the above decision do not find any illegality or irregularity in the Ld. CIT(A) deleting the addition made by the Ld. AO under rule 8D (2) (ii) of the Rules. "

8. This order of the Tribunal was appealed before the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi in ITA No. 904/2019 and ITA No.906/2019 vide order dated 16.10.2019 dismissed the appeals of the revenue. The relevant findings of the Hon'ble High Court read as under:

5. Insofar as the disallowance of expenditure under Section 14A is concerned, the ITAT has relied upon the decision of the Supreme Court Maxopp Investment Ltd us. CIT (2018), 402ITR 640 (SC). The decision of the Supreme Court reads as follows:

48. 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 14-A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and 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.

49. We note from the facts in State Bank of Patiala case 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 8-D of the Rules and holding that Section 14-A 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 ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming

the view of ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court.

50. It is to be kept in mind that in those cases where shares are held as "stock-intrade", 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."

6. The Tribunal has held in favour of the respondent assessee that it had earned the revenue on the shares held as stock in trade only by a quirk of fate. 7. In the light of aforesaid concluded position, both on facts and in law, in our view, no question of law arises for consideration in the present appeal. Accordingly, present appeals stand dismissed."

9. As no distinguishing decision has been brought to our notice by the DR, respectfully following the decision of this Tribunal as upheld by the Hon'ble High Court (supra) we direct the AO to delete the disallowance made u/s. 14A r.wir. 8D of the Act. Accordingly the ground No.1 and 2 of assessee's appeal are allowed and ground No.3 of revenue's appeal is dismissed."

24. Before us, no distinguishing feature in the facts of the present case and that of earlier years has been pointed out by Revenue nor has Revenue placed any material on record to demonstrate that the order of Tribunal in assessee's own case in earlier years has been set aside/overruled or stayed by higher judicial forum. We therefore find no reason to interfere with the order of CIT(A) and thus the Grounds of Revenue are dismissed. "

5.2. Further the Hon'ble Jurisdictional High Court vide its order dated 16.10.2019 in ITA Nos. 904/2019 and 906/2019 for Asst Years 2011-12 and 2012-13 respectively had dismissed the appeals of the revenue on this issue.

5.3. In view of the above, the Ground No. 6 is hereby dismissed.

6. The Ground No. 7 raised by the revenue is challenging the deletion of disallowance of contribution to P&S Bank Employees Pension Fund Trust while computing book profit u/s 115JB of the Act. Since the said disallowance is already deleted under normal provisions of the Act hereinabove, the disallowance gets automatically deleted u/s 115JB of the Act. Accordingly, the Ground No. 7 raised by the revenue is dismissed.

7. The Ground No. 8 raised by the revenue is challenging the deletion of disallowance of depreciation on securities while computing book profit u/s 115JB of the Act. Since the said disallowance is already deleted under normal provisions of the Act hereinabove, the disallowance gets automatically deleted u/s 115JB of the Act. Accordingly, the Ground No. 8 raised by the revenue is dismissed.

8. The Ground No. 9 raised by the revenue is challenging the deletion of disallowance of expenses u/s 14A of the Act in accordance with clause (f) of Explanation 1 to section 115JB(2) of the Act while computing book profit u/s 115JB of the Act. Since the said disallowance is already deleted under normal provisions of the Act hereinabove, the disallowance gets automatically deleted u/s 115JB of the Act. Accordingly, the Ground No. 9 raised by the revenue is dismissed.

9. The Ground No. 10 raised by the revenue is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07/02/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:07/02/2024
A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi