

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1086/Bang/2023
Assessment Year : 2013-14

M/s. Karnataka Bank Ltd., Near Mahaveera Circle, Pumpwell, Kankanady, Mangalore – 575 002. PAN: AABCT5589K	Vs.	The Assistant Commissioner of Income Tax, Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Ananthan, CA
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	31-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 04.10.2023 passed by NFAC, Delhi for A.Y. 2013-14 on following grounds of appeal:

“1. The order of the learned Commissioner (Appeals) is bad in law and against the facts of the case.

2. *The learned CIT(A) erred in upholding the disallowance u/s 14A to the extent of exempt income of Rs. 1,14,49,500/-.*

2.1. *The learned CIT(A) failed to appreciate the fact that no disallowance u/s 14A can be made in respect of securities held as Stock-in-trade.*

2.2. *The learned CIT(A) failed to appreciate the fact that the Appellant bank had not incurred any expenditure to earn the tax free income.*

For all these and other grounds, which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed.”

2. Brief facts of the case are as under:

2.1 The assessee is a private sector bank carrying on the business of banking. It filed its Return of Income for the impugned Assessment Year on 30/09/2013 declaring a total income of Rs. 297,42,62,580/- under the normal provisions.

2.2 The assessment was completed u/s 143(3) by making various disallowances including a disallowance of Rs. 49,98,92,324/- u/s 14A of the Act. On an appeal before the CIT(A), an order passed by the Ld.CIT(A) partly allowing the appeal in which the disallowance made u/s 14A was deleted. On a further appeal by the Revenue before this *Tribunal*, the matter was restored to the Ld.AO to decide the issue afresh by considering the ratio laid down by the *Hon'ble Supreme Court*.

The Ld.AO passed an order u/s 143(3) r.w.s. 254 on 27-03-2023. In the said order, the Ld.AO herein, made disallowance of Rs.1,14,49,500/- u/s 14A by invoking Rule 8D(2)(iii).

2.3 In the second round of appeal by the assessee before Ld.CIT(A), the disallowance made by the Ld.AO was upheld. In the impugned order, the Ld.CIT(A) held that disallowance u/s 14A r.w.r. 8D(2)(iii) can be made even if the securities are held as stock-in-trade.

2.4 Aggrieved by this order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

We have perused the submissions advanced by both sides in the light of records placed before us.

3. In our opinion, this issue is res integra as it has been considered by *Hon'ble Supreme Court* in case of *Maxopp Investments vs. CIT* reported in (2018) 91 taxmann.com 154. The Ld.DR relied on the order by this *Tribunal* in assessee's own case in *ITA No. 89/PAN/2017* dated 06/02/2020 relied by the Ld.CIT(A).

4. For better understanding, the relevant extracts from the order of *Hon'ble Supreme Court* is necessarily to be noted 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 investment made by a banking concern are part of the business or

banking. Therefore, the income arises from such investment 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 cooperative 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)

5. It is observed that decision relied upon by Ld.Sr.DR in assessee's own case, has missed out the clear distinction brought in by *Hon'ble Supreme Court* in para 40 of *Maxopp Investments vs. CIT (supra)* to be considered in totality. The *ratio decidendi* in para 40 of the decision has to be understood in respect of the facts judged therein. *Hon'ble Supreme Court* in para 40 deals with facts of the State Bank of Patiala where the assessee therein had held certain shares as “stock in trade”. *Hon'ble Supreme Court* in para 40 rendered a clear finding in respect of banking institutions that hold shares as “stock in trade” that may or may not yield dividend income. Present assessee before us is also a Bank, where shares were held as stock-in-trade and therefore it becomes business activity of assessee as observed by *Hon'ble Supreme Court*. In our opinion specific observation *Hon'ble Supreme Court* in the case of *Maxopp Investment vs CIT (supra)*, reproduced hereinabove are squarely applicable to facts of present case. Further *Hon'ble Karnataka High Court* has followed the same view in case of *Canara Bank* reported in (2023) (1) TMI 243, decision of *Hon'ble Delhi High Court* in case of *Punjab National Bank* reported in (2022) TIOL-888-HC-Del-IT.

6. Respectfully following the view taken by *Hon'ble Supreme Court* in the case of *Maxxop Investment vs CIT (supra)*, we allow this

ground raised by assessee and hold that these were not made by assessee in order to fall within the ambit of Rule 8D (iii) of Income tax Rules 1963.

Accordingly the grounds raised by the assessee stands allowed.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 31st January, 2024.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore