

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7291/DEL/2019 [A.Y. 2015-16]

The A.C.I.T.
Circle -21(1)
New Delhi

Vs.

Religare Securities Ltd
2nd Floor, Rajlok Building,
24, Nehru Place, New Delhi

PAN: AAACF 1952 D

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv
Ms. Somya Jain, CA

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 20.02.2024

Date of Pronouncement : 22.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 7, Delhi dated 03.07.2019 pertaining to A.Y. 2015-16.

2. The sum and substance of the grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 1,94,35,008/- made by the Assessing Officer u/s 14A of the Income-tax Act, 1961 [the Act, for short] r.w.r 8D of the Rules.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of providing securities broking services and depository services to retail clients. During the year under consideration, the assessee earned dividend income of Rs. 3,05,54,320/- from shares held by it as part of its business of trading in securities, which was claimed as exempt u/s 10(34) of the Act.

4. The assessee filed its original return of income on 30.11.2015 for which it made a suo motto disallowance of Rs. 50,99,442/- u/s 14Ar.w.r 8D of the Act. The assessee revised its return of income on 31.03.2017 and suo motto disallowance was revised to Rs. 1,11,19,312/-.

5. Invoking provisions of section 14A r.w.r 8D of the Act, the Assessing Officer computed the disallowance at Rs. 1,94,35,008/- and after deducting suo moto disallowance, disallowance was computed by the Assessing Officer.

6. The assessee challenged the addition before the Id. CIT(A) and the Id. CIT(A), while deleting the addition, followed his own order for A.Y 2013-14.

7. Before us, the Id. DR strongly supported the findings of the Assessing Officer and pointed out that for A.Y 2013-14, the Id. CIT(A) restricted the disallowance to the extent of exempt income and the same should be followed during the year under consideration also.

8. Per contra, the Id. counsel for the assessee stated that the assessee has earned dividend income from shares held as stock in trade and therefore, firstly, no disallowance u/s 14A of the Act needs to be made and, secondly, suo motto disallowance made by the assessee should suffice.

9. We have given thoughtful consideration to the orders of the authorities below. We have also given due consideration to the relevant documentary evidences brought on record in the form of Paper Book. On perusal of the details of profit from trading in equity shares and equity derivatives, we find that the assessee has shown total income at Rs. 3,05,54,320/-. Income has been earned from

shares held as stock in trade. Detail of such shares is exhibited at pages 67 and 68 of the Paper Book wherein shares purchased during the year were sold during the year itself, there being no opening and closing stock.

10. Though the assessee has suo motto disallowed Rs. 1,11,19,312/-, yet as per the ratio laid down by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd Vs. CIT402 ITR 640, the assessee was not required to make any disallowance u/s 14A of the Act on shares held as stock in trade. Relevant findings of the Hon'ble Supreme Court read 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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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 assessee as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

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40. xxxx 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."

11. Respectfully following the ratio laid down by the Hon'ble Supreme Court [supra] we decline to interfere with the findings of the ld. CIT(A).

12. In the result, the appeal of the Revenue in ITA No. 7291/DEL/2019 is dismissed.

The order is pronounced in the open court on 22.02.2024.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 22nd FEBRUARY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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