

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

BEFORE SHRI ANIKESH BANERJEE (JUDICIAL MEMBER) AND
SHRI GIRISH AGRAWAL (ACCOUNTANT MEMBER)

ITA No.3025 /Mum/2024
(Assessment Year: 2018-19)

DCIT, CC 1(1), Mumbai 905, 9 th Floor, Pratishtha Bhavan M.K. Road, Mumbai	vs	Edel Finance Company Ltd Edelwiess House, Off CST Road Kalina, Santacruz(East), Mumbai- 400 098 PAN: AAFCA9652C
APPELLANT		RESPONDENT

CO.No.134/Mum/2024
(Arising out of ITA No.3025 /Mum/2024)
(Assessment Year: 2018-19)

Edel Finance Company Ltd Edelwiess House, Off CST Road Kalina, Santacruz(East), Mumbai-400 098 PAN: AAFCA9652C	vs	DCIT, CC 1(1), Mumbai 905, 9 th Floor, Pratishtha Bhavan M.K. Road, Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Ajit Kumar Jain a/w Ms. Nishita Master
Department represented by	Shri Biswanath Das –CIT DR

Date of hearing	05/09/2024
Date of pronouncement	10/09/2024

ORDER

PER ANIKESH BANERJEE (JM):

This appeal of the revenue and the cross objection by the assessee are filed against the order of the Learned Commissioner of Income-tax (Appeals)-47, Mumbai, passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for A.Y. 2018-19. The impugned order was emanated from the order of the Learned National e-Assessment Centre, Delhi, (hereinafter 'Ld.AO') passed under section 143(3) read with section 144B of the Act, date of order 22/04/2021.

2. The revenue has taken the following grounds of appeal: -

- "i. Whether on the facts and circumstances and in law the Ld.CIT(A) was justified in not considering that amended provisions of the Finance Act 2022, section 14A shall apply to a case irrespective of whether exempt income has accrued or received during the previous year relevant to an assessment year and expenditure has been incurred during the said previous year in relation to such exempt income?"*
- ii. Whether on the facts and circumstances and in law the Ld.CIT(A) was justified in not considering that amended provisions of the Finance Act 2022 has nullified several judgments as relied by the assessee wherein it was held that no disallowance u/s 14A of the Act could be made in respect of any expenditure incurred in earning any exempt income, in the absence of any exempt income?"*
- iii. Whether on the facts and circumstances and in law the Ld.CIT(A) was justified deleting the addition of Rs.86,13,425/- made by Assessing Officer u/s 14A r.w.r. 8D(2)(iii), without appreciating the facts tht there is no evidence furnished by the assessee to prove that the borrowed funds on which interest is paid by it, are directly attributed to earning of taxable income only?"*
- (iv) Whether on the facts and circumstances and in law the Ld.CIT(A) was justified in deleting the addition made by the A.O. u/s 94(7) of the I.T.*

Act without considering the fact that; earning exempt dividend income and incurring loss on transaction, both on the same investment amounts to tax evasion through Dividend Stripping and hence provisions of Section 94(7) is attracted?"

3. The brief facts of the case are that the assessee is a public limited company registered with the Reserve Bank of India (RBI) as a Systematically important non deposit accepting non-banking financial company. The assessee is engaged in the business of corporate credit and retail group. During the impugned assessment year, the assessee invested in current and non-current assets and earned the dividend amount to Rs.76,21,48,735/- and claimed exemption under section 10(34) and 10(35) of the Act. The assessee during filing of return measily sum of Rs.42,31,712/- is offered to tax under section 14A read with rule 8D of the Income-tax Rules, 1962. The assessee briefly declared that the dividend earned from the non-current investment was to finally accepted that the dividend earned mostly from the stock in trade. The assessee invested Rs.2657 crores in current ,non-current and stock in trade for earning the dividend income from equity and from mutual fund. The assessee has a noninterest bearing fund of Rs.838 crores. It is fine to highlight that the dominant purpose for which investment in shares is made by the assessee is mostly in stock in trade. The Id.AO calculated the movement of the fund and accordingly calculated the quantum by disallowance of Rs.1,28,45,137/- under section 14A of the Act. The assessee already disallowed a sum of Rs.42,31,712/- suo motu, so the balance amount of Rs.86,13,425/- was added back under section 14A of the Act. Questioning the other issue for contravening section 94(7) related to not fulfilling the conditions and assessee was unable to submit documents related to applicability of provisions of section

94(7) and in response to same, the assessee stated that the classification as 'out of current investments' was an inadvertent mistake and expressed that predominant portion of the dividend was earned from investment of stock in trade. Having corrected the error of classification, the assessee failed to give the details before the Id. AO on holding shares as per the provisions of section 94(7) and accordingly the addition was confirmed amount to Rs.72,20,70,412/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) accepted the computation of disallowance under section 14A of the Act and further, the Id.CIT(A) calculated the weighted average of the investment both current investment and non-current investment. Finally, the Id.CIT(A) confirmed the disallowance under section 14A of the Act @1% of annual monthly average of both the investments which comes out to Rs.24,43,585/-. The assessee already declared Rs.42,31,712/-. Finally, the Id.CIT(A) restricted the disallowance on account of section 14A read with rule 8D amount to Rs.17,88,127/-. Related to violation of section 94(7), the Id.CIT(A) had accepted the details of the assessee and deleted the addition. Being aggrieved on the appeal order, the revenue filed an appeal before us. In this context, the assessee filed a cross objection before the Bench.

4. The Id.DR vehemently argued and mentioned that during calculation of annual monthly average, the Id.CIT(A) had not added the value of the closing stock. So, the disallowance is reduced to less than the disallowance made by the assessee while filing the return. But related to disallowance of addition under section 94(7), Id.DR stated that Id.CIT(A) has accepted the documents without giving opportunity to Ld.AO and requested the matter should be remanded back for further verification.

5. The Ld.AR vehemently argued and filed a written submission which is kept on the record. The Ld.AR argued that the stock in trade cannot be the part of the calculation and respectfully relied on the order of Hon'ble **Supreme Court** in case of **Maxopp Investment Ltd vs CIT, New Delhi [2018] 91 taxmann.com 154 (SC)**. He also respectfully relied on judgements in the case of **PCIT vs PNB Housing Finance Ltd (2023) 157 taxmann.com 465 (SC)**; and **PCIT vs State Bank of Patiala Income Tax Appeal No.244 of 2016**, date of order **30.06.2017**. The Ld.AR argued that the assessee has submitted all the details before the Ld.CIT(A) related to all the conditions fulfilling under section 94(7) of the Act which are as follows:

- (i) Acquisition/ buy should be within 3 months from the recorded date.
- (ii) The sale should be within 3 months (9 months in case of units);
After such date; and
- (iii) the dividend or income of such securities or unit received or receivable by a person is exempt.

Even a purchase made on a recorded date has to be construed as (i) purchased with an intention to receive an exempt dividend and units, satisfying the first condition. The Ld.AR stated that in the case of assessee, the recorded date is the date of purchase, but related to verification before the Ld.AO, the Ld.AR accepted that the Ld.AO has not got the opportunity for verification.

6. We heard the rival submission and considered the documents available in the record. During the hearing, the Ld. DR respectfully relied on the order of the coordinate bench of the **ITAT, Gauhati Bench** in the case of **ACIT vs Williamson Financial Services Ltd (2022) 140 taxmann.com 164 (Gau. Trib)**. The Ld.DR argued that the Finance Act amended the Finance Act, 2022 amended section 14A with effect from 01/04/2022 provided that provisions shall apply whether or not exempt income has accrued, arisen or received, is clarificatory in nature and thus

applicable retrospectively. The co-ordinate bench of ITAT observed that this amendment has retrospective effect. But on the other hand, the Ld.AR relied on the order of the Hon'ble **High Court of Judicature at Bombay, Writ Petition No.1753 of 2016** in the case of **HDFC Bank Ltd, Mumbai vs DCIT-23, Mumbai, dt of order 25/02/2016**. The relevant para is reproduced as below :-

“18. The alternative submission (b) which was put forth by the petitioner before the Tribunal that the investment in securities are its stock in trade. Consequently, Section 14A of the Act would be inapplicable by placing reliance upon the decision of this Court in India Advantage Securities Ltd. (supra). However this was also disregarded by the impugned order on the ground that this Court did not entertain an appeal of the Revenue from the order of the Tribunal holding that Section 14A of the Act is inapplicable where the investment has been made in stock in trade. This non entertainment of an appeal being on the ground that this Court found no substantial question of law. Therefore, the impugned order holds that the decision relied upon in India Advantage Securities Ltd. (supra) does not lay down any binding proposition of law.

19. We are unable to comprehend how and why the impugned Uday S. Jagtap 26 of 33 1753-16-cwp=.doc order of the Tribunal is of the view that if an appeal is not admitted from an order of the Tribunal, then it is open to the Tribunal in another case to decide directly contrary to the view taken by the earlier order of the Tribunal, which is not entertained by this court in appeal. This without even as much as a whisper of any explanation with regard to how and why the facts of the two cases are different warranting a view different from that taken by the Tribunal earlier. In fact when an appeal is not entertained then the order of the Tribunal holds the field and the coordinate benches of the Tribunal are obliged to follow the same unless there is some difference in the facts or law applicable and the difference in fact and / or law should be reflected in its order taking a different view. Moreover, the impugned order of the Tribunal places reliance upon the decision of this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra) to deny the claim. On this issue no decision was rendered by this court in Godrej and Boyce Manufacturing Co. Ltd.(supra) and therefore how could it be relied upon to deny the claim of the petitioner is beyond comprehension. This again shows that the Tribunal has acted beyond the limits of its authority.”:

Where it is held that the amendment of section 14A has no retrospective effect. The same issue is considered by the order of Hon'ble **High Court of Delhi** in the case of **PCIT, Central vs Era Infrastructure India Ltd[2022] 141 taxmann.com 289 (Delhi)**. The relevant paragraphs 8 to 10 are reproduced as below: -

"8. Consequently, this Court is of the view that the amendment of section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed v. State of Kerala [2000] 113 Taxman 470/245 ITR 360 and Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association [1992] 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in IL & FS Energy Development Co. Ltd. (supra) and Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi).

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of IL & FS Energy Development Co. Ltd. (supra)."

Considering the above discussion, we are not interfering in the impugned appeal order in the application of section 14A. The grounds of the revenue in this issue are failed.

6.1. Considering the violation of section 94(7), the reasonable opportunity for verification was denied to the Id. AO during the appeal hearing. We consider the prayer of the Id. DR. We remit the matter to the file of the Id. AO with following direction that the assessee is allowed to produce the details of purchase of shares and recorded dates for verification which was filed before the Id. CIT(A) during the appeal proceeding. The Id. AO is directed to verify as per the provisions of section 94(7) of the Act. The matter is remanded only on the limited purpose as directed.

Needless to say, the assessee should get the reasonable opportunity for hearing in set aside proceedings.

6.2. Accordingly, the appeal of the revenue grounds nos. 1. (i), (ii) & (iii) are dismissed; ground nos. 1. (iv) and (v) are allowed for statistical purposes; ground nos. 2,3 & 4 are general in nature, do not require any adjudication. The Cross Objection of the assessee is rendered infructuous and withdrawn.

7. In the result, appeal of the revenue is partly allowed, and cross objection of the assessee is dismissed as withdrawn.

Pronounced in the open court on _____ September 2024.

(GIRISH AGRAWAL)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt :September, 2024
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai

	Details	Date	Initials	Designation
1	Draft dictated on PC on	06.09.2024		Sr.PS/PS
2	Draft Placed before author	09.09.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			