

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

&

SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 413/Mum/2024

Assessment Year: 2020-2021

Infina Finance Private Limited 7 th Floor, Dani Corporate Park 158 CST Road, Kalina Santacruz East Maharashtra - 400098 [PAN: AACCM1561D]	Vs	NeAC, Delhi
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 414/Mum/2024

Assessment Year: 2018-19

Infina Finance Private Limited 7 th Floor, Dani Corporate Park 158 CST Road, Kalina Santacruz East Maharashtra - 400098 [PAN: AACCM1561D]	Vs	ACIT, Circle-2(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 415/Mum/2024

Assessment Year: 2017-18

Infina Finance Private Limited 7 th Floor, Dani Corporate Park 158 CST Road, Kalina Santacruz East Maharashtra - 400098 [PAN: AACCM1561D]	Vs	ACIT, Circle-2(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 416/Mum/2024
Assessment Year: 2016-17

Infina Finance Private Limited 7 th Floor, Dani Corporate Park 158 CST Road, Kalina Santacruz East Maharashtra - 400098 [PAN: AACCM1561D]	Vs	ACIT, Circle-2(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Madhur Agarwal, A/R
Revenue by :	Shri Krishna Kumar, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/10/2024

घोषणा की तारीख /Date of Pronouncement: 16/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 413/Mum/2024, I.T.A. No. 414/Mum/2024, I.T.A. No. 415/Mum/2024 & I.T.A. No. 416/Mum/2024, are four separate appeals by the assessee preferred against four separate orders of NFAC, Delhi, pertaining to AYs 2016-17, 2017-18, 2018-19 & 2020-21 respectively.

2. Since commons issues are involved in all the appeals, they were heard together and are disposed off by this common order for the sake of convenience.

3. The common grievance relates to the disallowance u/s 14A r.w.r. 8D, though the quantum may differ in the captioned assessment years.

4. Briefly stated the facts of the case are that the assessee is a non-banking financial company engaged mainly in business of investing in

shares and securities, financing and granting loans and advances against the shares. At the concession of the representatives for our convenience, we consider the facts of AY 2016-17 wherein the assessee filed return of income electronically on 29/09/2017 declaring total income at Rs.2,37,73,76,630/- which was assessed at Rs.2,60,88,12,310/- after making addition on account of disallowance u/s 14A of Rs.23,12,35,679/- which was later on rectified at Rs.3,91,21,320/-. Since the assessee had already made disallowance of Rs. 26,85,250/- a further disallowance of Rs.3,64,36,069/- was made u/s 14A r.w.r. 8D.

4.1. The addition was challenged before the ld. CIT(A) but without any success.

5. Before us, the ld. Counsel for the assessee vehemently contended that assessee was holding shares as stock-in-trade, therefore, no disallowance has to be made u/s 14A r.w.r. 8D. The ld. Counsel for the assessee further stated that the disallowance, if any, has to be made only in respect of those investment which yielded exempt income. Strong reliance was placed on the decision of the Special Bench of the Delhi Tribunal in the case of *ACIT Vs. Vireet Investment Pvt. Ltd.* [2017] 82 *taxmann.com* 415.

Per contra, the ld. D/R, strongly supported the findings of the lower authorities.

6. We have given a thoughtful consideration to the orders of the authorities below and have carefully perused the relevant documentary

evidence brought on record in the light of Rule 18(6) of the ITAT Rules, 1963. In the balance sheet of the assessee, the fact is that certain shares are held as stock-in-trade. Whether disallowance u/s 14A of the Act can be made in the case of shares held as stock-in-trade was considered by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC)*. The relevant findings 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.

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 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 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 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."

7. The same view was followed by the Hon'ble Supreme Court in the case of *South Indian Bank Ltd. vs. CIT* [2021] 438 ITR 1 (SC). The relevant findings read as follows:-

"23. It would now be appropriate to advert in some detail to Maxopp Investment Ltd. v. CIT10. This case interestingly is relied by both sides' counsel. Writing for the Bench, Justice Dr. A.K. Sikri noted the objective for incorporation of [Section 14A](#) in the Act in the following words: -

"3..... The purpose behind [Section 14-A](#) of the Act, by not permitting deduction of the expenditure incurred in relation to income, which does not form part of total income, is to ensure that the assessee does not get double benefit. Once a particular income itself is not to be included in the total income and is exempted from tax, there is no reasonable basis for giving benefit of deduction of the expenditure incurred in earning such an income....."

The following was written explaining the scope of [Section 14-A\(1\)](#):

"41. In the first instance, it needs to be recognised that as per [Section 14-A\(1\)](#) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such 10 (2018) 15 SCC 523 expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."

Adverting to the law as it stood earlier, this Court rejected the theory of dominant purpose suggested by the Punjab & Haryana High Court and accepted the principle of apportionment of expenditure only when the business was divisible, as was propounded by the Delhi High Court.

Finally adjudicating the issue of expenditure on shares held as stock-in-trade, the following key observations were made by Justice Sikri:

“ 50. 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. [Maxopp Investment Ltd. v. CIT, 2011 SCC OnLine Del 4855 : (2012) 347 ITR 272] 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.....”

The learned Judge then considered the implication of Rule 8D of the Rules in the context of [Section 14-A\(2\)](#) of the Act and clarified that before applying the theory of apportionment, the Assessing Officer must record satisfaction on Suo Moto disallowance only in those cases where, the apportionment was done by the assessee. The following is relevant for the purpose of this judgment:

51.It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect.....”

24. Another important judgment dealing with [Section 14A](#) disallowance which merits consideration is [Godrej and Boyce Manufacturing Company Ltd. V. DCIT11](#). Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of assessee. This Court accordingly concluded that for attracting provisions of [Section 14A](#), the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi’s judgment reads as follow:

“36. what cannot be denied is that the requirement for attracting the provisions of [Section 14-A \(1\)](#) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income.....”

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 02.11.2015, 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 Vs. Nawanshahar Central Cooperative Bank Ltd.](#)¹² 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, vs. State Bank of Patiala](#)¹³ 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."

8. The Hon'ble High Court of Delhi in the case of *PCIT vs. Punjab National Bank* reported in [2022] 140 taxmann.com 131 (Delhi), had the occasion to consider a similar grievance and held as follows:-

"19. The Supreme Court in this judgment upheld the decision of the High Court of Punjab and Haryana arising under section 14A of the Act with respect to an assessee bank. It further held that when the shares were held as stock-in-trade and not as investment particularly by banks, the main purpose was to trade in those shares and earn profits there from and therefore section 14A of the Act was not attracted and the expenditure could not be disallowed. The judgment of Maxopp Investment Ltd. (supra) has been duly noted by the Tribunal in its impugned order and in our opinion the Tribunal has correctly disallowed the disallowance under rule 8D(2)(iii) of the Rules.

20. In the present case as well, the Tribunal has considered that the Respondent was holding the shares as a stock-in-trade and has, therefore, disallowed the addition made by the JAO. Learned counsel for the Appellant has not disputed the fact that the shares are held as stock-in-trade by the Respondent.

21. In the aforesaid view of the matter, the questions of law proposed by the Appellant do not arise for consideration either in fact or in law in view of the judgments of the Supreme Court, which have conclusively decided the questions sought to be canvassed by the Appellant."

9. The Co-ordinate Bench in the case of *Religare Securities Ltd. in ITA No. 7291/Del/2019; AY 2015-16* has followed the view taken by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. (supra)*.

10. In light of the aforementioned decisions of the Hon'ble Supreme Court, Hon'ble High Courts and Co-ordinate bench, we direct the AO to exclude the shares held as stock-in-trade for the purpose of computation of disallowance u/s 14A of the Act and recompute the disallowance.

11. Further we find that the Special Bench in the case of *Vireet Investments (supra)* has held that only those investment have to be considered which yield exempt income, therefore, respectfully following the same, we direct the AO to consider only those investments for the purpose of disallowance u/s 14A r.w.r. 8D which yielded exempt income.

12. With the above directions, we restore the issues to the file of the AO for re-computation of disallowance and for deciding the issues afresh as per the relevant provisions of law and settled precedents.

13. In the result, the captioned appeals are allowed for statistical purposes.

Order pronounced in the Court on 16th October, 2024 at Mumbai.

Sd/-

(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 16/10/2024

RC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai