

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमितभ शुक्ल, लेखा सदस्यके समक्ष**  
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**  
**AND SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपीलसं./I.T.A.Nos.2876 & 2877/Chny/2024  
(निर्धारण वर्ष / Assessment Years: 2009-10 & 2011-12)

<b>The Assistant Commissioner of Income Tax,</b> Circle-2(1) Trichy (stationed at Thanjavur)	Vs	<b>City Union Bank Limited,</b> #24B, Narayana, Gandhi Nagar, Kumbakonam-612 001.
		PAN : AAACC-1287-E
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.Shivanand K.Kalakeri, CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. S.Ananthan,CA & Mrs.R.Lalitha, CA

सुनवाईकीतारीख/Date of hearing	:	24.03.2025
घोषणाकीतारीख /Date of Pronouncement	:	25.03.2025

**आदेश / ORDER**

**PER MANU KUMAR GIRI, JM:**

The captioned appeals filed by the Revenue are directed against separate orders of the Ld. Commissioner of Income Tax (Appeals)(NFAC) Delhi [CIT(A)] both dated 27.09.2024 for Assessment Years 2009-10 & 2011-12. Since facts and issues in both these appeals are similar, they were heard together and are disposed off by this common order.

2. The grounds raised by the Revenue in ITA No.2876/Chny/2024 for AY 2009-10 read as under:-

- “(1) The order of the Ld. CIT(A) is opposed to law on the facts and in the circumstances of the case.  
(2) The Ld. CIT(A) erred in deleting the disallowances of Rs.3,64,92,898/- u/s 40(a)ia for non-deduction of tax on the interest payments made towards VIP deposits.

*(3) The Ld. CIT(A) failed to notice that the VIP deposits are in the nature of time deposits only, hence, the provisions u/s 40(a)(ia) of the IT Act, 1961 are rightly invoked by the Assessing Officer.*

*(4) The Ld. CIT(A) erred in deleting the disallowance of Rs.2,65,58,185/- made u/s 14A of IT Act rwr 8D of IT Rules, when the Assessing Officer had recorded his satisfaction for invoking the provision of rule 8D of IT Rules, 1962.*

*(5) The Ld. CIT(A) erred in holding that if the assessee has mixed funds - interest free funds and interest bearing funds. the investment must be considered to have been made out of interest free funds, when the assessee has not maintained separate books of accounts for the investments made.*

*(6) For these and such other grounds that may be adduced at the time of hearing and it is prayed that the order of the Ld.CIT(A) may be reversed and that of the Assessing Officer be restored.”*

### 3. Brief facts are as under:

The assessee is a banking company and filed its return of income for the A.Y. 2009-10 on 29.09.2009 declaring total income of Rs. 176,76,44,736/-. Assessee filed appeal before the CIT(A) against the additions and disallowances made in the Assessment order u/s 143(3) dated 29-12-2011 and the total Income was revised to Rs. 186,37,15,440/-. During the course of assessment proceedings, it was noticed in the assessment completed u/s 143(3) r.w.s. 147 of the Act that the disallowance u/s 14A of the Act was not made as per Rule 8D of the I.T. Rules and deduction u/s 36(1)(viiia) had been allowed in respect of Rasipuram Branch of the assessee bank, the population of which exceeds 10000 as per censuses 2001. Hence, AO made an addition of Rs. 3,64,92,898/- on account of disallowance u/s 40(a)(ia), Rs. 37,32,900/- on account of disallowance u/s 36(1)

(vii) and Rs. 2,65,58,185/- on account of disallowance u/s 14A and added back to the total income of the assessee.

4. At the outset, Ld. Counsel for the assessee submitted that the issues with regard to recurring deposits are covered in favour of the assessee by the co-ordinate Bench order of the Tribunal in assessee's own case for the assessment years 2009-10 in ITA No.3078/Chny/2024 dated 28.02.2025. The learned CIT DR did not dispute the averments of the learned counsel for the assessee and relied on the order of the AO.

5. We have heard both the sides and perused material on record. We find that the co-ordinate Bench of this Tribunal in assessee's own case in ITA No.3078/Chny/2024 vide order dated 28.02.2025 for assessment year 2010-11 has decided an identical issue in favour of the assessee by observing as under:-

*"7. We have heard rival submissions and perused material on record. We find an identical issue has been considered by the Tribunal in assessee's own case (supra). The Tribunal has decided the issue in favour of the assessee. The relevant finding of the Tribunal in assessee's own case concerning AYs 2012-13 & 2014-15 reads as follows:-*

*"35. Ground No.7, challenges the decision of the Id. CIT(A) that interest in respect of recurring deposit cannot be disallowed for non deduction of TDS thereon. The Id. CIT (A) had referred to the relevant provisions of Section 194A of the Act and amendment made by Finance Act, 2015. The*

*decision of the id. CIT(A) is based on proper appreciation of the legal position. Accordingly, we do not find any merits in the ground No.7 raised by the Revenue. Ground No.7 of the Revenue is dismissed."*

*8. In the instant case, since assessment year concerned is 2010-11 and amendment to section 194A of the Act, is applicable for and from AY 2015-16, the said amendment will not have application to concerned assessment year. Therefore, recurring deposit cannot be understood as time deposit and its interest payments are not liable for TDS u/s. 194A of the Act during the relevant assessment year.*

*9. Before concluding, it is to be mentioned Ld.AR in the course of his submissions has sought to support order of CIT(A) on a ground decided against him by referring to Rule 27 of Income Tax (Appellate Tribunal) Rules, 1963. In this context, Ld.AR had relied on judgement of the Hon'ble Delhi High Court in the case of Sanjay Sawhney Vs. PCIT (2020) (5) TMI 441 (Del). The learned AR submitted the reopening of assessment is invalid, since reasons recorded is on borrowed satisfaction. In this context, Ld. AR relied on two judgements of the Hon'ble Bombay High Court in the cases of Gandhibag Sahakari Bank Ltd. Vs. DCIT (2023) 9 TMI 1344 (Bom) and Sociedade De Fomento Industrial Pvt. Ltd. & Shantilal Khushal Das & Bros P. Ltd Vs. ACIT (2024) 1 TMI 1080 (Bom) in support of his submissions that reopening of assessment is bad in law. However, since we have decided the issue on merits in favour of the assessee, legal contention of the Ld.AR is not adjudicated and is left open.*

*10. In the result, appeal filed by the Revenue is dismissed."*

6. Respectfully following the decision of the co-ordinate bench of this Tribunal in assessee's own case for the assessment year 2010-

11 cited supra, we hold that recurring deposits cannot be understood as time deposit and its interest payments are not liable for TDS for the assessment year 2009-10 & 2011-12 also. Similarly, we kept the issue open with regard to Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 as mentioned by the co-ordinate Bench in para 9 of the Tribunal order cited supra. Therefore, the grounds raised by the Revenue on the issue of disallowance u/s.40(a)(ia) for non-deduction of tax in interest payments made towards VIP deposits for AYs 2009-10 & 2011-12 are dismissed.

7. The next issue raised by the Revenue is in regard to disallowance made u/s.14A r.w. rule 8D of IT Rules. During the course of assessment, the AO was of the view that Section 14A of the Income tax Act provides that the expenditure incurred in connection with exempted income has to be excluded while computing the total income. Therefore, a reasonable amount of administrative expenses has to be excluded u/s 14A. Now, Rule 8D provides a method for computation of the expenditure incurred in connection with exempted income. Rule 8D has been prescribed to arrive at the figure of expenditure attributable to the exempt income, if it could not arrived at directly. The case of the assessee is such one, since its investments and payment of interest, the

component of managerial remuneration and other staff expenses are interlinked and it would be difficult to allocate individually. (i) The ITAT Special Bench, Mumbai vide its order dated 20.10.2008 in the cases of CIT Vs. Daga Capital Management Private Limited (ITA No. 1372/Del/2005), Maxopp Investments Limited Vs. ACIT (ITA No.183/Del/2005) and M/s. Cheminvest Limited Vs. DCIT (ITA 2048/Del/2005) has held that the provisions of section 14A(2) and (3) are procedural in nature and hence the application of Rule 8D would take effect retrospectively. (ii) Since the assessee has made disallowance on its own only on ad-hoc basis, application of Rule 8D is ideal in the case of the assessee and thus, the AO has made disallowance u/s.14A of the Act. On appeal, the Ld.CIT(A) has allowed this ground by following the order of the ITAT, Chennai dated 09.07.2019. Aggrieved by the order of Ld.CIT(A), the revenue is in appeal before us.

8. At the outset, Ld.AR for the assessee has relied upon the coordinate Bench decision in assessee's own case in ITA No.1418 & 1419/Chny/2019 dated 11.03.2024. The learned CIT DR did not dispute the averments of the learned counsel for the assessee and relied on the order of the AO.

9. We have perused order of the co-ordinate Bench decision of this Tribunal in assessee's own case in ITA Nos.1418 & 1419/Chny/2019 dated 11.03.2024 for assessment years 2015-16 & 2016-17, wherein the Tribunal vide para 16.3 held as under:-

*"16.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. This issue is squarely covered in favour of the assessee by the decision of coordinate bench of ITAT, Chennai benches in appellant's own case for assessment years 2012-13 & 2013- 14, where the Tribunal under identical set of facts held as under: "27. Ground No.1 challenges the decision of the Id. CIT(A) in deleting the addition made u/s.14A of the Act on the ground that investments held by the assessee company is stock in trade and therefore resort to provisions u/s.14A of the Act cannot be made. The Assessing Officer made a disallowance of I2,82,57,685/- u/s.14A r.w.r. 8D. On appeal before the Id. CIT(A), the Id. CIT(A) held that the provisions of Section 14A of the Act cannot be applied in case of exempt income earned from investment held in stock in trade. Reasoning of the Id. CIT(A) has been overturned by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore contention of the assessee that provisions of Section 14A of the Act cannot be invoked, when the securities are held as stock-in-trade, cannot be accepted. As regards to other limb of the argument of the assessee that in the absences of any finding by the Assessing Officer as to how the contention of the assessee that no expenditure was incurred is incorrect no disallowance should be made. We find from the assessment order that the assessee bank itself has offered a sum of I2,19,751/- under the provisions of Section 14A of the Act. From the perusal of the order of the Assessing Officer, it is clear that the Assessing Officer had not assigned any reason whatsoever as to how the claim of the assessee is incorrect. In the similar facts, the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT, 402 ITR 640 held that in the absence of the finding of the Assessing Officer resort to provisions of Section 14A of the Act r.w.r 8D of the Rules cannot be made. This decision was followed by the Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra) cited by holding as under:- "Ground No. 8 challenges the addition of I3,88,882/- invoking the provision of Section 14A of the Act. It is the contention of the appellant that the appellant*

*had not incurred any expenditure to earn exempt income. The Assessing Officer had not given any findings as to how the claim of the assessee- bank that no expenditure was incurred to earn the exempt income was incorrect. In the absence of this finding resort to the provisions of rule 8D of the Income Tax Rules cannot be made as held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore this ground of appeal filed by the assessee is allowed. Accordingly, this ground of appeal stands allowed in favour of the assessee". Similar view was taken up by the Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd, 370 ITR 338 and PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 274. The Hon'ble Delhi High Court had firmly held that mere rejection of the explanation of the assessee per se cannot be accepted. This decision of Delhi High Court in the case of Moonstar Securities Trading and Finance Co. (P) Ltd, was affirmed by the Hon'ble Supreme Court in the case of dismissal of SLP in PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 275. In the light of the above legal positions, we are of the considered opinion that even in the present case no reason was assigned by the Assessing Officer for rejecting the explanation of the assessee. In the circumstances, ratio of the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) is squarely applicable. We direct the Assessing Officer to delete the addition made u/s.14A of the Act. Thus, ground No.1 raised by the Revenue is dismissed."*

10. Respectfully following the decision of the co-ordinate Bench decision of the Tribunal in assessee's own case referred supra, we are inclined to uphold the finding of the Ld.CIT(A) and reject the grounds taken by the Revenue.

11. The facts and issues involved in ITA No.2877/Chny/2024 for AY 2011-12 are identical to the facts and issues which we have already considered in ITA No.2876/Chny/2024 for the

assessment year 2009-10. Hence, the reasons given by us in the preceding paragraphs of ITA No.2876/Chny/2024 shall *mutatis mutandis* apply to this appeal as well. Accordingly, we dismiss both the appeals raised by the Revenue.

12. In the result, both the appeals raised by Revenue are dismissed.

Order pronounced in the open court on 25<sup>th</sup> March, 2025

Sd/-  
(अमिताभ शुक्ला)  
( Amitabh Shukla )  
लेखा सदस्य / Accountant Member

Sd/-  
( मनु कुमार गिरि)  
( Manu Kumar Giri)  
न्यायिक सदस्य/ Judicial Member

चेन्नई/Chennai,  
दिनांक/Date: 25.03.2025  
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:  
1.Appellant  
2.Respondent  
3. आयकर आयुक्त/CIT Chennai/Madurai  
4. विभागीय प्रतिनिधि/DR  
5. गार्ड फाईल/GF.