

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1374/Ahd/2019  
(Assessment Year: 2015-16)

Wealth First Portfolio Managers Pvt. Ltd., Capital House, 10 Phase II, Nr. Prahladnagar Garden, Anandnagar Road, Ahmedabad	Vs.	Deputy Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad
[PAN No.AABCD4580C]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Manish J Shah, A.R.
<b>Respondent by:</b>	Shri Ashok Kumar Suthar, Sr. D.R.
<b>Date of Hearing</b>	23.08.2023
<b>Date of Pronouncement</b>	19.09.2023

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals)-8, (in short “Ld. CIT(A)”), Ahmedabad in Appeal No. CIT(A)-8/ 10362/2017-18 vide order dated 08.07.2019 passed for Assessment Year 2015-16.

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

*“1. The C.I.T.(A) erred in law and in facts in confirming the disallowance u/s.14A of the I.T. Act to the extent of exempt income of Rs. 1,77,00,024/- without appreciating the facts and law of the case properly.*

2. *The C.I.T.(A) erred in law and in facts in holding that the provision of sec. 14A would be applicable even if investment is held by assessee as stock-in-trade.*

*The appellant craves leave to add, amend or alter the aforesaid ground of appeal at the time of hearing, if the need arise.”*

3. The brief facts of the case are that the assessee is engaged in the business of trading in shares and bonds, earning brokerage income, other stock broker services etc. and is a Member of the Bombay Stock Exchange. During the course of assessment the Assessing Officer observed that assessee has earned exempt income of Rs. 1,77,00,024/-. The assessee, in the return of income, made a suo moto disallowance of Rs. 75,488/- under Section 14A of the Act. The Assessing Officer observed that the assessee had claimed total interest expenditure of Rs. 2,53,72,667/-, which is not attributable to any particular of income of the assessee. The Assessing Officer observed that in the instant case the assessee has not maintained any separate account and nor furnished any documentary evidence of expenses towards earning exempt income. Accordingly, the Assessing Officer made a disallowance of Rs. 2,04,57,396/- under Section 14A of the Act r.w.r. 8D.

4. In appeal, the assessee submitted that it is engaged in the business of trading in shares and bonds etc. and a large number of investments were held by the assessee as “stock-in-trade”, which yielded exempt income. As per the assessee since the assessee is engaged in the business of stock broking, most of the investments were held by the assessee as “stock-in-trade”. The assessee submitted that the value of “stock-in-trade” as appearing in the balance sheet cannot be subject matter of disallowance

under Section 14A of the Act. Further, it was submitted that in the earlier year as well in the later assessment proceedings, the respective Assessing Officers had never included the value of “stock-in-trade” in the value of investments for the purpose of making disallowance under Section 14A of the Act r.w.r. 8D(2) of the Income Tax Rules. The assessee also placed reliance on several judicial precedents in support of the contention that exempt income earned from investments made which are held as “stock-in-trade” needs to be excluded for the purpose of disallowance under Section 14A of the Act. However, the CIT(A) did not accept the contention of the assessee and held that even if a particular stock / instrument is held as “stock-in-trade” and the income earned out of such investment is exempt as per the provisions of the Act, the provision of Section 14A of the Act would be applicable. However, the Ld. CIT(A) observed that in the instant case the Assessing Officer had made a disallowance of Rs. 2,04,57,396/- under Section 14A of the Act, whereas the assessee had earned exempt income of Rs. 1,77,00,024/-. Accordingly, Ld. CIT(A) held that in view of various judicial precedents, the disallowance made under Section 14A of the Act cannot exceed the exempt income claimed by the assessee. Accordingly, the Ld. CIT(A) restricted the disallowance under Section 14A of the Act to the amount of extent of exempt income earned by the assessee. While partly allowing the appeal of the assessee, the Ld. CIT(A) made the following observations:-

*“5.6 In view of the above legal position, as very explicitly expounded by the Hon’ble Supreme Court, the clear position of law emerges that even if a particular stock/instrument is held as stock-in-trade or the same is acquired by the assessee for the purpose of vesting in itself*

*controlling interest but if the income earned out of that is exempt as per the provisions of the Act, the provisions of Section 14A of the Act would be applicable. Accordingly, respectfully following the judgment in the case of Maxopp Investment referred supra it is held that the exempt income earned by the appellant on the shares/securities/instrument and other investment held as stock-in-trade would attract the provisions of Section 14A of the Act and such investments will form a part of the aggregate of investments for the purpose of computing the disallowance as per the formula contained in Rule 8D of the Rules. Since appellant has not maintained separate records or has not apportionment the expenses between the taxable and exempt income the expense related to the earning of exempt income cannot be ascertained from the accounts. Therefore, AO was fully justified in computing the disallowance u/s. 14A by applying the formula contained in Rule 8D of the Income Tax Rules 1961. Accordingly, the action of the AO to this extent is confirmed.*

*5.7 However, in the appellant's case the disallowance made in more than the exempt income claimed and allowed. The total exempt income claimed and allowed is Rs.1,77,00,024/- as per the impugned assessment order. The disallowance made u/s. 14A cannot exceed the exempt income claimed as has been held by Hon'ble Gujarat High Court in the case of Corrttech Energy P. Ltd. (2014) 223 Taxmann 130 (Guj.)."*

5. The assessee is in appeal before us against the aforesaid order passed by the CIT(A). Before us, the Counsel for the assessee submitted that the brief issue for consideration is whether the dividend income earned on

shares held by the assessee as “stock-in-trade” comes within the purview of disallowance under Section 14A of the Act. In this case, it is an undisputed fact that assessee is a stock broker registered with the Bombay Stock Exchange and is engaged in the business of purchase and sale of shares, earning brokerage income etc. as part of its business activity. During the year under consideration the assessee had substantial share holding, which were classified as “stock-in-trade” in its books of account. The Ld. CIT(A) was of the view that even if a particular stock / instrument is held as “stock-in-trade” and the income earned out of the same is exempt as per the provision of the Act, the provisions of Section 14A of the Act would be applicable to such exempt income earned by the assessee in such shares / securities / instruments and other investments held as “stock-in-trade”. The Counsel for the assessee drew our attention to the recent decision in the case of **PCIT vs. Ms. PNB Housing Finance Ltd. 146 taxmann.com 445 (Delhi)** and on the decision of ITAT in the case of **Nice Bombay Transport Pvt. Ltd. vs. ACIT 103 taxmann.com 338 (Delhi-Trib.)**, in which it was held that where the shares were held by the assessee as “stock-in-trade”, dividend earned on said shares would not attract Section 14A of the Act.

6. In response, the Ld. D.R. placed reliance on the observations made by Ld. CIT(A) in the appellate order.

7. We have heard the rival contentions and perused the material on record. We observe that the Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. 91 taxmann.com 154 (SC)** held that the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala is correct on

the issue when it carves out a distinction between ‘stock-in-trade’ and ‘investment’. However, the SC did not agree to the test of dominant intention as applied by the Punjab and Haryana High Court. The SC held that the applicability of Section 14A is triggered in cases when shares are held as stock-in-trade and the main purpose is to trade in those shares and earn profits. This so, as certain dividend income is incidentally earned. However, by the provisions of Section 10(34) of the Act, dividend income is not included in the total income and is exempt from tax. **Hence, the expenditure incurred in acquiring those shares will have to be apportioned, based on the facts of each case, between taxable and non-taxable income as held in the case of Walfort Share and Stock Brokers P Ltd.** The Hon'ble Supreme Court made the following observations, while passing the order:

**“JUDGMENT OF PUNJAB AND HARYANA HIGH COURT IN STATE BANK OF PATIALA**

*18. This case arose in the context where exempt income in the form of dividend was earned by the Bank from securities held by it as its stock in trade. The assessee filed its return declaring an income of about Rs.670 crores which was selected for scrutiny. The return showed dividend income exempt under section 10(34) and (35) of about Rs.11.07 crores and net interest income exempt under section 10(15)(iv) (h) of about Rs.1.12 crores. The total exempt income claimed in the return was, therefore, Rs.12,19,78,015/-. The assessee while claiming the exemption contended that the investment in shares, bonds, etc. constituted its stock-in-trade; that the investment had not been made only for earning tax free income; that the tax free income was only incidental to the assessee's main business of sale and purchase of securities and, therefore, no expenditure had been incurred for earning such exempt income; the expenditure would have remained the same even if no dividend or interest income had been earned by the assessee from the said securities and that no expenditure on proportionate basis could be allocated against exempt income. The assessee also contended that in any event it had acquired the securities from its own funds and, therefore, section 14A was not applicable. The AO restricted the disallowance to the amount*

*which was claimed as exempt income by applying the formula contained in Rule 8D holding that Section 14A would be applicable. The CIT(A) issued notice of enhancement under Section 251 of the Act and held that in view of Section 14A of the Act, the assessee was not to be allowed any deduction in respect of income which is not chargeable to tax. Therefore, he disallowed the entire expenditure claimed instead of restricting the disallowance to the amount which was claimed as exempt income as done by the AO. The ITAT set aside the order of the AO as well as CIT(A). It referred to a CBDT Circular No.18/2015 dated 02.11.2015 which states that income arising from investment of a banking concern is attributable to the business of banking which falls under the head "Profits and gains of business and profession". The circular states that shares and stock held by the bank are 'stock-in-trade' and not 'investment'. Referring to certain judgments (which we will also refer to) and the earlier orders of the Tribunal, it was held that if shares are held as stock-in-trade and not as investment even the disallowance under rule 8D would be nil as rule 8D(2)(i) would be confined to direct expenses for earning the tax exempt income. In the aforesaid factual backdrop, in appeal filed by the Revenue, the High Court noted that following substantial question of law arose for consideration:*

*"Whether in the facts and circumstances of the case, the Hon'ble ITAT is right in law in deleting the addition made on account of disallowance under section 14A of the Income Tax Act, 1961?"*

**19.** *In its analysis, the High Court accepted the contention of the counsel for the assessee that the assessee is engaged in the purchase and sale of shares as a trader with the object of earning profit and not with a view to earn interest or dividend. The assessee does not have an investment portfolio. The securities constitute the assessee's stock-in-trade. The Department, in fact, rightly accepted, as a matter of fact, that the dividend and interest earned was from the securities that constituted the assessee's stock-in-trade. The same is, in any event, established. The assessee carried on the business of sale and purchase of securities. It was supported by Circular No.18, dated November 02, 2015, issued by the CBDT, which reads as under:—*

*.....*

**23.** *According to the High Court, what is to be disallowed is the expenditure incurred to "earn" exempt income. The words 'in relation to' in Section 14A must be construed accordingly. Applying that principle to the facts at hand, the High Court concluded as under:*

*"Now, the dividend and interest are income. The question then is whether the assessee can be said to have incurred any expenditure at all or any part of the said expenditure in respect of the exempt income*

*viz. dividend and interest that arose out of the securities that constituted the assessee's stock-in-trade. The answer must be in the negative. The purpose of the purchase of the said securities was not to earn income arising therefrom, namely, dividend and interest, but to earn profits from trading in i.e. purchasing and selling the same. It is axiomatic, therefore, that the entire expenditure including administrative costs was incurred for the purchase and sale of the stock-in-trade and, therefore, towards earning the business income from the trading activity of purchasing and selling the securities. Irrespective of whether the securities yielded any income arising therefrom, such as, dividend or interest, no expenditure was incurred in relation to the same."*

**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 & 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.”*

8. We would also like to place reliance on the decision of Mumbai Tribunal in the case of **Gajanan Enterprises Vs ACIT (ITAT Mumbai)** in **ITA No.5599/Mum/2018**, which made the following observations on this issue:

*“7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, the exempt income yielding shares were held by the assessee as*

*„stock-in-trade“. Although, the opening stock of inventories as on 01.04.2013 was reflected at Rs. 21,46,64,955/-, however, the same as on 31.03.2014 stood reduced to nil. In sum and substance, the stock of shares which were held by the assessee as on 01.04.2013 were liquidated during the year under consideration, and no part of the same was reflected in its „closing stock“ as on 31.03.2014. However, in our considered view, the aforesaid factual position would principally have no bearing on the computing of the disallowance under Sec. 14A r.w. Rule 8D. We find that it is the claim of the Ld. A.R that as the exempt dividend income yielding shares were held by the assessee company as „stock-intrade“, therefore, no disallowance under Sec. 14A r.w. Rule 8D was called for in its case. In our considered view, the aforesaid contention of the Ld. A.R is absolutely misconceived and cannot be accepted. On a perusal of judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi, we find, that the Hon'ble Apex Court had disapproved the dominant purpose test that was pressed into service by the assessee for the purpose of interpreting the scope and gamut of Sec. 14A of the Act. Infact, the Hon'ble Court had subscribed to the theory of the apportionment which was made available by the legislature by inserting Sec. 14A vide the Finance (Amendment) Act, 2001 with retrospective affect from 01.04.1962. In the aforesaid judgment, the Hon'ble Apex Court had inter alia observed that where shares are held by an assessee as stock-in-trade, the earning of exempt dividend income on the same would trigger the applicability of Sec. 14A of the Act. Accordingly, the Hon'ble Apex Court had „set aside“ the dominant purpose test which was relied upon by the High Court. For the sake of clarity, the observations of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) are reproduced as under :*

*“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.”*

*Accordingly, in terms of our aforesaid observations, we are of the considered view that no infirmity emerges from the order the CIT(A) who after relying on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi (2018) 402 ITR 640(SC), had rightly concluded that the shares which were held by the assessee as stock-in trade were to be considered for the purpose of computing the disallowance under Sec. 14A of the Act. As regards the reliance placed by the Ld. A.R on the order of a coordinate bench of the ITAT, Delhi in the case of Nice Bombay Transport (P) Ltd. Vs. ACIT(OSD), New Delhi (2019) 175 ITD 684 (Del), the same in our considered view, not being consistent with the view taken by the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra), would thus not be binding as a judicial precedent. Insofar the reliance placed by the Ld. A.R on the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Alpha G. Corp. Development Ltd. (ITA No. 599/2018, dated 25.04.2019), the same being distinguishable on facts would not assist the case of the assessee before us. Also, the order of the ITAT "F" Bench, Mumbai in the case of M/s Vora Financial Services P. Ltd. Vs. ACIT-2(3)(1), Mumbai, wherein an ad hoc disallowance had been preferred as against that worked out under Sec. 14A r.w. Rule 8D(2), having been rendered without considering the aforesaid judgment of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra) would also not be binding. We thus finding no infirmity in the order of the CIT(A) who had rightly sustained the disallowance computed by the A.O under Sec. 14A r.w. Rule 8D(2)(iii), therein uphold the same.*

*8. Resultantly, the appeal filed by the assessee is dismissed.*

9. The Ld. Counsel for the assessee cited several decisions in support of his contention that provisions of Section 14A do not apply to shares held as "stock-in-trade". However, it is a well settled law that a decision of a High Court would have binding force in the State in which the Court has jurisdiction but not outside that State. Decisions of the High Court are only binding on subordinate Courts, Authorities and Tribunals situated within its jurisdictional territory. We observe that in the case of **CIT v. Thana Electricity Supply Ltd. [1994] 206 ITR 727**, the Bombay High Court observed thus (at page 734):

*"(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well-settled that the decision of a High Court will have the force of binding precedent only in the State or territories on, which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of article 141 of the Constitution. "*

10. Accordingly, we observe that since there is no decision of the jurisdiction High Court on this issue and in view of the judgment of Hon'ble Supreme Court in the Maxopp case (supra), wherein it has been held that when the shares are held as 'stock-in-trade', 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, which 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. Accordingly, in view the above observations by Hon'ble Supreme Court in Maxopp case (supra) and in the case of Gajanan Enterprises (supra), we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law holding that the provisions of section 14A

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of the Act are applicable and thereby restricting the disallowance to the extent of dividend income earned by the assessee.

11. In the result, the appeal of the assessee is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>19/09/2023</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 19/09/2023

TANMAY, Sr. PS

**TRUE COPY**

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad