

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 1715/PN/2015

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Paresh Pritamlal Mehta,  
401, Wood Crest, 27/A,  
Gidney Park, Salisbury Park,  
Pune - 411037

PAN : ACDPM3218P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Income Tax Officer,  
Ward - 5(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.K. Tyagi  
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 15-03-2016

घोषणा की तारीख / Date of Pronouncement : 18-03-2016

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

The appeal of the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Pune dated 15-10-2015 for the assessment year 2012-13.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in the business of trading in shares. The assessee filed his return of income for the assessment year 2012-13 on 28-09-2012 declaring total income at ₹1,73,590/-. Thereafter, the assessee filed revised return of income on 06-02-2013. However, there was no change in the total income declared. The case of the assessee was selected for scrutiny and accordingly notice u/s. 143(2) was issued to the assessee on 06-08-2013. During the period relevant to the assessment year 2012-13, the assessee had earned dividend income of ₹12,04,572/-. The said dividend income was earned by the assessee on the shares held as stock-in-trade. During the course of scrutiny assessment proceedings, the Assessing Officer made disallowance of ₹46,89,748.83/- u/s. 14A r.w. Rule 8D of the Income Tax Rules, on the tax free income earned by the assessee.

Aggrieved by the assessment order dated 23-01-2015, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Before the Commissioner of Income Tax (Appeals) the assessee stated that the Tribunal in ITA No. 1903/PN/2013 in assessee's own case for assessment year 2010-11 decided on 04-09-2015 has held that no disallowance u/s. 14A r.w. Rule 8D can be made on dividend income from shares held as stock-in-trade. However, the Commissioner of Income Tax (Appeals) disregarding the order of Tribunal passed in assessee's own case, followed the decision of Mumbai Bench of the Tribunal in the case of HDFC Bank Ltd. Vs. DCIT in ITA No. 374/Mum/2012 decided on 23-09-2015 and rejected

the claim of the assessee. Against the findings of the Commissioner of Income Tax (Appeals), the assessee is in appeal before the Tribunal.

3. Shri S.K. Tyagi appearing on behalf of the assessee submitted that the Commissioner of Income Tax (Appeals) has committed an error in not following the judicial discipline by ignoring the order of Tribunal in assessee's own case on identical issue in the earlier assessment year. The ld. AR submitted that the Tribunal in assessee's own case for assessment year 2010-11 had upheld the order of Commissioner of Income Tax (Appeals) in deleting the addition made u/s. 14A r.w. Rule 8D on the dividend income from shares held as stock-in-trade. The ld. AR further submitted that the order of Mumbai Bench of the Tribunal in the case of HDFC Bank Ltd. Vs. DCIT (supra) on which the Commissioner of Income Tax (Appeals) has placed reliance has been reversed by the Hon'ble Bombay High Court in Writ Petition No. 1753 of 2016 title HDFC Bank Ltd. Vs. DCIT decided on 25-02-2016. The ld. AR submitted that the Commissioner of Income Tax (Appeals) should have followed the order of Tribunal passed under identical set of facts rather than distinguishing the same. The ld. AR on the issue of judicial propriety placed reliance on the following decisions:

- i. Bhopal Sugar Industries Ltd. Vs. ITO, 40 ITR 618 (SC);
- ii. Union of India and Others Vs. Kamalakshmi Finance, AIR 1992 SC 711;
- iii. Eagle Flask Industries Ltd. Vs. Dy. CIT, 72 ITD 455 (Pune);
- iv. ICICI Prudential Life Insurance Co. Ltd. Vs. CIT, 110 DTR 315 (Bom).

4. On the other hand Shri Pankaj Garg representing the Department fairly admitted that the issue raised in the present appeal is identical to the issue adjudicated by the Tribunal in assessee's own case in ITA No. 1903/PN/2013 for assessment year 2010-11.

5. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also considered the decisions on which the ld. AR has placed reliance in support of his submissions. The assessee has earned tax free dividend income of ₹12,04,572/-. The assessee has earned aforesaid dividend income on shares held as stock-in-trade. It is not disputed by the Department that the assessee is engaged in the business of trading of shares and the assessee is not maintaining any investment portfolio. The Assessing Officer made disallowance of ₹46,89,749/- u/s. 14A r.w. Rule 8D. It is also an admitted fact that similar disallowance was made in the case of assessee in the assessment year 2010-11. The Commissioner of Income Tax (Appeals) deleted the disallowance, the Department carried the matter in appeal to the Tribunal. The Co-ordinate Bench of the Tribunal by placing reliance on the decision rendered in the case of Kunal Polymers Vs. DCIT in ITA No. 1859/PN/2012 decided on 15-07-2015 and the decision of Hon'ble Bombay High Court in the case of CIT Vs. India Advantage Securities Ltd. in Income Tax Appeal No. 1131 of 2013 decided on 13-04-2015 dismissed the appeal of the Department. The Assessing Officer vide assessment order dated 23-01-2015 made similar disallowance on the shares held as stock-in-trade for the assessment year under appeal. In first appeal the Commissioner of

Income Tax (Appeals) disregarding the order of Tribunal in assessee's own case in the earlier assessment year decided the issue against the assessee by placing reliance on the decision of Mumbai Bench of the Tribunal in the case of HDFC Bank Ltd. Vs. DCIT (supra) and the decision of Mumbai Bench of the Tribunal (Third Member) in the case of D.H. Securities Pvt. Ltd. Vs. DCIT reported as 41 taxmann.com 352.

6. The Hon'ble Bombay High Court in the case of CIT Vs. India Advantage Securities Ltd. (supra) has confirmed the order of Tribunal wherein it was held that no disallowance u/s. 14A r.w. Rule 8D can be made on shares held as stock-in-trade. The Pune Bench of the Tribunal has been consistently following this view by placing reliance on the judgment rendered by the Hon'ble Karnataka High Court in the case of CCI Ltd. Vs. JCIT reported as 71 DTR 141 (Kar.).

The Hon'ble Bombay High Court in the case of HDFC Bank Ltd. Vs. DCIT (supra) has reversed the order of Mumbai Bench of the Tribunal.

7. We observe that the Commissioner of Income Tax (Appeals) has erred in not following the order of Tribunal in assessee's own case. The Co-ordinate Bench of the Tribunal had rejected the appeal of Department for assessment year 2010-11 on identical set of facts. The Commissioner of Income Tax (Appeals) should have maintained 'Judicial Propriety' in following the order of Appellate Authority. As of now we restrain ourselves from commenting on the judicial indiscipline committed by the Commissioner of Income Tax (Appeals) and expect

that he shall be more careful in future in honouring the orders of the higher Appellate Authorities.

8. In view of the facts of the case and documents on record the impugned order is set aside disallowance of ₹46,89,749/- u/s. 14A r.w. Rule 8D is deleted and the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on Friday, the 18<sup>th</sup> day of March, 2016.

Sd/- (आर. के. पांडा / R.K. Panda) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी / Vikas Awasthy) न्यायिक सदस्य / JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> March, 2016  
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Pune
4. आयकर आयुक्त / The CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune