Maxopp Investment Ltd.. vs Commr.Of I.T New Delhi on 12 February, 2018

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Bench: Ashok Bhushan, A.K. Sikri

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 104-109 OF 2015

MAXOPP INVESTMENT LTD. .....APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX,
NEW DELHI .....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1423 OF 2015

CIVIL APPEAL NO. 3267 OF 2013

CIVIL APPEAL NO. 130 OF 2015

CIVIL APPEAL NOS. 110-112 OF 2015

CIVIL APPEAL NO. 1500 OF 2018
(ARISING OUT OF SLP (CIVIL) NO. 19614 OF 2013)

CIVIL APPEAL NO. 1508 OF 2018
(ARISING OUT OF SLP (CIVIL) NO. 31417 OF 2016)

Signature Not Verified

CIVIL APPEAL NO. 115 OF 2015

CIVIL APPEAL NO. 8596 OF 2014

2

CIVIL APPEAL NO. 1505 OF 2018
(ARISING OUT OF SLP (CIVIL) NO. 27054 OF 2016)

CIVIL APPEAL NOS. 10096 OF 2013

CIVIL APPEAL NO. 123 OF 2015

CIVIL APPEAL NO. 6590 OF 2015

CIVIL APPEAL NO. 1576 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 4024 OF 2018
@ DIARY NO. 39820 OF 2017)

CIVIL APPEAL NO. 1579 OF 2018
(ARISING OUT OF SLP (CIVIL) NO. 20475 OF 2017)

CIVIL APPEAL NO. 1578 OF 2018
(ARISING OUT OF SLP (CIVIL) NO. 23123 OF 2017)

CIVIL APPEAL NO. 18019 OF 2017

CIVIL APPEAL NO. 1580 OF 2018
(ARISING OUT OF SLP (CIVIL) 32405 OF 2017)

CIVIL APPEAL NO. 1575 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 4023 OF 2018
@ DIARY NO. 36413 OF 2017)

CIVIL APPEAL NO. 2802 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 6746 OF 2018
@ DIARY NO. 1146 OF 2018)

CIVIL APPEAL NO. 2791 OF 2018
3

(@ SPECIAL LEAVE PETITION (CIVIL) NO. 6685 OF 2018
@ DIARY NO. 39823 OF 2017)

CIVIL APPEAL NO. 2792 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 6686 OF 2018
@ DIARY NO. 41903 OF 2017)

CIVIL APPEAL NO. 1577 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 4027 OF 2018
@ DIARY NO. 41890 OF 2017)

CIVIL APPEAL NO. 2793 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 6687 OF 2018
@ DIARY NO. 41203 OF 2017)
AND
CIVIL APPEAL NO. 2794 OF 2018
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 6688 OF 2018
@ DIARY NO. 41922 OF 2017)

JUDGMENT

A.K. SIKRI, J.

Chapter IV of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) contains the provisions pertaining to ‘computation of total income’. Section 14 which is the first provision under this Chapter enumerates five heads of income within which all income are to be classified. Under the scheme of the Act, certain types of income are exempt from tax and, in this behalf, specific provisions are made stipulating that such incomes would not form part of the total income under the Act as fortiorari, they are not included under any of the heads of income and, therefore, no taxes levied on such exempted incomes. It is in this backdrop, Section 14A of the Act clarifies that if any expenditure is incurred in earning that income which does not form part of the total income, such expenditure shall also not be allowed as deduction. Though, Section 14A was inserted by the Finance Act, 2001, but it was given retrospective effect from April 1, 1962. Original Section was in the following terms:

> “Section 14A - For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.”

2) By the Finance Act, 2006, the aforesaid provision was amended whereby it was renumbered as sub-section (1) and sub-sections (2) and (3) were added thereto. Before that, a proviso was also added by amendment vide Finance Act, 2002 which was to operate retrospectively from May 11, 2001. In these batch of appeals, we are not concerned with sub-sections (2), (3) or the proviso and it is only interpretation that has to be given to sub-section (1), which arises for consideration.

3) Though, it is clear from the plain language of the aforesaid provision that no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act, the effect whereof is that if certain income is earned which is not to be included while computing total income, any expenditure incurred to earn that income is also not allowed as a deduction. It is well known that tax is leviable on the net income. Net income is arrived at after deducting the expenditures incurred in earning that income. Therefore, from the gross income, expenditure incurred to earn that income is allowed as a deduction and thereafter tax is levied on the net income. The purpose behind Section 14A 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. For example, income in the form of dividend earned on shares held in a company is not taxable. If a person takes interest bearing loan from the Bank and invests that loan in shares/stocks, dividend earned therefrom is not taxable. Normally, interest paid on the loan would be expenditure incurred for earning dividend income. Such an interest would not be allowed as deduction as it is an expenditure incurred in relation to dividend income which itself is spared from tax net. There is no quarrel upto this extent.

4) However, in these appeals, the question has arisen under varied circumstances where the shares/stocks were purchased of a company for the purpose of gaining control over the said company or as ‘stock-in-trade’. However, incidentally income was also generated in the form of dividends as well. On this basis, the assessees contend that the dominant intention for purchasing the share was not to earn dividends income but control of the business in the company in which shares were invested or for the purpose of trading in the shares as a business activity etc. In this backdrop, the issue is as to whether the expenditure incurred can be treated as expenditure ‘in relation to income’ i.e. dividend income which does not form part of the total income. To put it differently, is the dominant or main object would be a relevant consideration in determining as to whether expenditure incurred is ‘in relation to’ the dividend income. In most of the appeals, including in Civil Appeal Nos.

104-109 of 2015, aforesaid is the scenario. Though, in some other cases, there may be little difference in fact situation. However, all these cases pertain to dividend income, whether it was for the purpose of investment in order to retain controlling interest in a company or in group of companies or the dominant purpose was to have it as stock-in-trade.

5) Before we proceed further, we may briefly note the facts of Civil Appeal Nos. 104-109 of 2015, for better understanding of the issue involved.

The appellant company is engaged, inter alia, in the business of finance, investment and dealing in shares and securities. The appellant holds shares/securities in two portfolios, viz. (a) as investment on capital account; and, (b) as trading assets for the purpose of acquiring and retaining control over investee group companies, particularly Max India Ltd., a widely held quoted public limited company. Any profit/loss arising on sale of shares/securities held as 'investment' is returned as income under the head 'capital gains', whereas profit/loss arising on sale of shares/securities held as 'trading assets' (i.e. held, inter alia, with the intention of acquiring, exercising and retaining control over investee group companies) has been regularly offered and assessed to tax as business income under the head 'profits and gains of business or profession'.

Consistent with the aforesaid treatment regularly followed, the appellant filed return for the previous year relevant to the Assessment Year 2002-03, declaring income of Rs.78,90,430/-. No part of the interest expenditure of Rs.1,16,21,168/- debited to the profit and loss account, to the extent relatable to investment in shares of Max India Limited, yielding tax free dividend income, was considered disallowable under Section 14A of the Act on the ground that shares in the said company were acquired for the purposes of retaining controlling interest and not with the motive of earning dividend. According to the appellant, the dominant purpose/intention of investment in shares of Max India Ltd. was acquiring/retaining controlling interest therein and not earning dividend and, therefore, dividend of Rs.49,90,860/- earned on shares of Max India Ltd. during the relevant previous year was only incidental to the holding of such shares. The Assessing Officer (AO), while passing the assessment order dated August 27, 2004, under Section 143(3) worked out disallowance under Section 14A of the Act at Rs.67,74,175/- by apportioning the interest expenditure of Rs.1,16,21,168/- in the ratio of investment in shares of Max India Ltd. (on which dividend was received) to the total amount of unsecured loan. The AO, however, restricted disallowance under that Section to Rs.49,90,860/- being the amount of dividend received and claimed exempt.

6) In appeal, the Commissioner of Income Tax (Appeals) {CIT(A)} vide order dated January 12, 2005 upheld the order of the AO. The appellant herein carried the matter in further appeal to the Income Tax Appellate Tribunal, New Delhi (for short the 'ITAT'). In view of the conflicting decisions of various Benches by the ITAT with respect to the interpretation of Section 14A of the Act, a Special Bench was constituted in the matter of ITO v. Daga Capital Management (Private) Ltd. 1 The appeal of the appellant was also tagged and heard by the aforesaid Special Bench.

7) The Special Bench of the ITAT in the case of Daga Capital Management (Private) Ltd., dismissing the appeal of the appellant, 1 312 ITR (AT) 1 inter alia, held that investment in shares representing controlling interest did not amount to carrying on of business and, therefore, interest expenditure

incurred for acquiring shares in group companies was hit by the provisions of Section 14A of the Act. The Special Bench further held that holding of shares with the intention of acquiring/retaining controlling interest would normally be on capital account, i.e. as investment and not as 'trading assets'. For that reason too, the Special Bench held that there existed dominant connection between interest paid on loan utilized for acquiring the aforesaid shares and earning of dividend income. Consequently, the provisions of Section 14A of the Act were held to be attracted on the facts of the case.

8) On the interpretation of the expression 'in relation to', the majority opinion of the Special Bench was that the requirement of there being direct and proximate connection between the expenditure incurred and exempt income earned could not be read into the provision. According to the majority view, 'what is relevant is to work out the expenditure in relation to the exempt income and not to examine whether the expenditure incurred by the assessee has resulted into exempt income or taxable income'. As per the minority view, however, the existence of dominant and immediate connection between the expenditure incurred and dividend income was a condition precedent for invoking the provisions of Section 14A of the Act. It was accordingly held, as per the minority, that mere receipt of dividend income, incidental to the holding of shares, in the case of a dealer in shares, would not be sufficient for invoking provisions of Section 14A of the Act.

9) Against the aforesaid order of the Special Bench, the appellant preferred appeal under Section 260A of the Act to the High Court. The High Court of Delhi has, vide impugned judgment dated November 18, 2011, held that the expression 'in relation to' appearing in Section 14A of the Act was synonymous with 'in connection with' or 'pertaining to', and, that the provisions of that Section apply regardless of the intention/motive behind making the investment. As a consequence, proportionate disallowance of the expenditure incurred by the assessee is maintained.

10) It would be pertinent to point out at this stage that Punjab and Haryana High Court in a recent judgment in the case of Principal Commissioner of Income Tax v. State Bank of Patiala2 has taken a view which runs contrary to the aforesaid view taken by the Delhi High Court. The Punjab and Haryana High Court followed, with approval, the judgment of the High Court of Karnataka in CCI Ltd. v. Joint Commissioner of Income Tax, Udupi Range 3 The Revenue has filed appeals challenging the correctness of the aforesaid decisions. Thus, in view of conflict of opinions of various High Courts, these batch of 2 (2017) 391 ITR 218 (P&H) 3 (2012) 206 Taxman 563 appeals are by those assessees who were lost before the High Court and by the Income Tax Department against the judgments of the High Court where the view taken is favourable to the assessee and against the Revenue.

11) Before adverting to the discussions on these judgments, let us go through the relevant statutory provisions, as that would enable us to appreciate the ratio of these cases more appropriately. Since the focus of discussion is Section 14A of the Act, we reproduce Section 14A in its entirety hereinbelow:

> "Expenditure incurred in relation to income not includible in total income.

14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. (2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001."

12) Sub-section (2) of Section 14A deals with the proportionality as it empowers the AO to extricate that amount of expenditure which is incurred in relation to such income which does not form part of the total income under the Act. However, this is to be done 'in accordance with such method as may be prescribed.' This prescription is provided by the delegated legislation, in the form of Rule 8D of the Income Tax Rules, 1962 (for short 'Rules') which Rule was inserted w.e.f. March 24, 2008 vide Income Tax (Fifth Amendment) Rules, 2008 4. We, thus, reproduce Rule 8D hereunder:

"Method for determining amount of expenditure in relation to income not includible in total income. 8D.(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2). (2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

4 In Civil Appeal No. 2165 of 2012 (Commissioner of Income Tax, Mumbai v. M/s. Essar Teleholdings Ltd. through its Manager pronounced on January 31, 2018, this Court has held that

Rule 8D is prospective in nature.

(i) the amount of expenditure directly relating to income which does not form part of total income;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:— Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

13) With the aforesaid statutory scheme in mind, we traverse through the judgments of the Delhi High Court in Maxopp Investment Ltd. and that of Punjab and Haryana High Court in State Bank of Patiala. JUDGMENT OF DELHI HIGH COURT IN MAXOPP INVESTMENT LTD.

14) Three questions fell for consideration before the High Court. For the purpose of these appeals, it is only question No. 1 which is relevant, and formulation thereof by the High Court was as under:

> "1. Whether expenditure (including interest paid on funds borrowed) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein is hit by section 14A of the Income tax Act, 1961 inasmuch as the dividend received on such shares does not form part of the total income?"
>
> 15) On facts, it was noted that the assessee company is in the business of finance, investment and was dealing in shares and securities. The assessee held shares and securities, partly as investments on the "capital account" and partly as "trading assets" for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd. As per the assessee, any profit resulting on the sale of shares held as trading assets was duly offered to tax as business income of the assessee. During the previous year relevant to the assessment year 2002-03, the assessee incurred total interest expenditure of Rs. 1,61,21,168/-, which was claimed as

> business expenditure under section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as "the said act"). According to the assessee, the expenditure claimed was not hit by section 14A of the Act, on the ground that although borrowed funds were partly utilised for investment in shares held as trading assets, such investment was made with the intention to acquire and retain a controlling interest in the aforesaid company and that the receipt of dividend thereon was merely incidental.

The High Court then took note of legislative history of Section 14A of the Act and Rule 8D of the Rules. Thereafter, the Court went on to discuss the law which stood prior to insertion of Section 14A. Taking note of certain judgments, the High Court observed that prior to the insertion of Section 14A in the Act, the law was that when an assessee had a composite and indivisible business, which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. However, where the business was divisible, the principle of apportionment of the expenditure was applicable and the expenditure apportioned to the 'exempt' income or income not exigible to tax, was not allowable as a deduction. The High Court, then, took cognizance of the legislative intent and objective behind the insertion of Section 14A by referring to the Memorandum Explaining the Provisions of the Finance Bill, 2001. It also reproduced passages from few judgments of this Court. Since, for the purpose of the present case, it is necessary to keep in mind the objectives behind this provision, we reproduce that part of the discussion hereunder:

> "Objective behind insertion of section 14A
>
> 15. The object behind the insertion of section 14A in the said Act is apparent from the Memorandum explaining the provisions of the Finance Bill 2001 which is to the following effect:-
>
> "Certain incomes are not includable while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.
>
> It is proposed to insert a new section 14A so as to clarify the intention of the Legislature since the inception of the Income-tax Act, 1961, that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act.

The proposed amendment will take effect retrospectively from April 1, 1962 and will accordingly, apply in relation to the assessment year 1962-63 and subsequent assessment years."

16. As observed by the Supreme Court in the case of CIT v. Walfort Share and Stock Brokers P Ltd: 326 ITR 1 (SC), the insertion of section 14 A with retrospective effect reflects the serious attempt on the part of Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the said act against the taxable income. The Supreme Court further observed as under:-

".. In other words, section 14 A clarifies that expenses incurred can be allowed only to the extent that they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of section 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of section 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income..." "..Expenses allowed can only be in respect of earning taxable income. This is the purport of section 14A. In section 14A, the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed in the Chapter IV would fall within section 14A. The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..

(Emphasis supplied)"

17. The Supreme Court also clearly held that in the case of an income like dividend income which does not form part of the total income, any expenditure/deduction relatable to such (exempt or non-taxable) income, even if it is of the nature specified in sections 15 to 59 of the said Act, cannot be allowed against any other income which is includable in the total income. The exact words used by the Supreme Court are as under:-

"Further, section 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Sections 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Sections 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in sections 15 to 59 are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in sections 15 to 59 but related to the income not forming part of the total income could not be allowed against other income includable in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14 A. (emphasis supplied)"

16) The High Court then undertook the exercise of analysing the provisions of Section 14A of the Act and, in the process, examined the contours and scope of the expressions 'in relation to' and 'expenditure incurred' occurring therein. The High Court pointed out that contention of the assessees, in this behalf, was that the word 'incurred' must be taken literally in the sense that the expenditure must have actually taken place. Moreover, the expenditure must also have taken place in relation to income which does not form part of total income. Further, the expression "in relation to" implies that there must be a direct and proximate connection with the subject matter. In other words, only that actual expenditure which is made directly and for the object of earning exempt income (in the present appeals - dividend income) could be disallowed under section 14A of the Act. If the dominant and main objective of spending was not the earning of 'exempt' income then, the expenditure could not be disallowed under section 14A of the Act provided it was otherwise allowable under sections 15 to 59 of the said Act. The High Court, however, did not agree with the aforesaid propositions advanced by the learned counsel for the assessees which according to it was mired by several difficulties. Distinguishing the case law cited by the assessees where the expression 'in relation to' was interpreted by this Court, as not applicable in the present context, the High Court, instead, referred to the judgment in the case of Doypack Systems Pvt. Ltd. v. Union of India5 wherein this Court has held that expressions 'pertaining to', 'in relation to' and 'arising out of' used in the deeming provisions, are used in an expansive sense. It also referred to the judgment of this Court in CIT v. Walfort Share and Stock Brokers P Ltd.6 wherein this Court has held that the basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, it's associated or related expenditure would also not be permitted to be debited against other taxable income.

17) Likewise, explaining the meaning of 'expenditure incurred', the High Court agreed that this expression would mean incurring of actual expenditure and not to some imagined expenditure. At the same time, observed the High Court, the 'actual' expenditure that is in contemplation under section 14A(1) of the said Act is the 'actual' expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act. On the basis of the aforesaid discussion, the High Court answered the question formulated by it in the affirmative.

5 (1988) 2 SCC 299 6 (2010) 326 ITR 1 (SC) 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:-

"Subject: Interest from Non-SLR securities of Banks – Reg.

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources."

2. Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if, the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT Vs Nawanshahar Central Cooperative Bank Ltd. [2007] 160TAXMAN 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

(emphasis supplied)"

20) The High Court pointed out that the 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 the investment. If the assessee is found to have treated the shares and securities as stock-in-trade, the income arising therefrom would be business income. A loss would be a business loss. Thus, an assessee may have two portfolios, namely, investment portfolio and a trading portfolio. In the case of the former, the securities are to be

treated as capital assets and in the latter as trading assets.

21) Further, as a banking institution, the assessee was also statutorily required to place a part of its funds in approved securities, as held in CIT v. Nawanshahar Central Co-operative Bank Ltd. 7. Since, the shares, bonds, debentures purchased by the assessees constituted its stock-in-trade, the provisions of Section 14A were not applicable. Here, the Court noted distinction between stock-in-trade and investment and made the following observations:

> "17. Under section 14A, an expenditure can be disallowed only if it is incurred by the assessee in relation to income exempt from tax. The dividend or interest from the assessee's stock-in-trade i.e. the securities was exempt from tax in view of sections 10(15)(iv)(h),(34) and (35). This was incidental to its business of banking. The business income on account of the assessee trading in the securities is assessable under the head "Profits and gains of business and profession". The expenditure incurred in relation to stock-in-trade arising as a result of investment in shares and debentures is deductible under sections 28 to 37. There is a distinction between stock-in-trade and investment. The object of earning profit from trading in securities is different from the object of earning income, such as, dividend and interest arising therefrom. The object of trading in securities does not constitute the activity of investment where the object is to earn dividend or interest."
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> 22) The High Court then discussed in detail the judgment in Walfort Share and Stock Brokers P Ltd. which related to dividend stripping.

After explaining the objective behind Section 14A of the Act (which is already noted above), this Court in the facts of that case, had held that a payback does not constitute an 'expenditure incurred' in terms of Section 14A as it does not impact the profit and loss account. This expenditure, in fact, is a payout.

23) According to the High Court, what is to be disallowed is the 7 (2007) 289 ITR 6 (SC) 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."

24) We may also note here that the High Court referred to the judgment of the Karnataka High Court in CCI Ltd. case and concurred therewith. This judgment in CCI Ltd. is, however, a very short judgment which records the submission of counsel for the parties very briefly and thereafter the entire discussion is contained in para 5 that reads as under:

"5. When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63% of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any expenditure at all. Though the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside."

25) At this stage, it will also be useful to refer a judgment of Calcutta High Court in Commissioner of Income Tax v. G.K.K. Capital Markets (P.) Ltd.8 which has also agreed with the view taken by the Karnataka High Court. In that case, the assessee was engaged in the business of share trading. In the computation of income, the assessee claimed long-term capital gains as exempt income and declared expenditure disallowable against it under Section 14A of the Act. The AO treated the long-term capital gains as business income. The Appellate Tribunal found that the assessee did not have any investment and all the shares were held as stock-in-trade as was evident from the orders of the lower authorities. On those facts it held that once the assessee had kept the shares as stock-in-trade, Rule 8D of the Rules would not apply. On the questions whether the Appellate Tribunal was justified in deleting the disallowance under Section 14A computed in accordance with Rule 8D

8 (2017) 392 ITR 196 (Cal) and in holding the investments as shares stock-in-trade, the High Court held that the AO had accepted the correctness of the disallowable expenditure offered by the assessee on its claim of the amount as long-term capital gains. He had not allowed the claim itself treating the amount as business income to thereafter disallow the offered expenditure. According to the High Court, since the finding of fact was recorded by the AO regarding the exempt income

claimed being treated as business income and the shares held by the assessee having been treated as stock-in-trade, there could not have been disallowance of expenditure under Section 14A of the Act and that provision had no application.

26) It would be pertinent to mention that earlier judgment of the same High Court in the case of Dhanuka and Sons v. CIT9 was cited by the Revenue. However, this judgment was distinguished on the ground that, in that case, there was no dispute that part of the income of the assessee from its business was from dividend whereas the assessee was unable to produce any material before the authorities below showing the source from which such shares were acquired. For better understanding, it would be necessary to note the discussion in the case of Dhanuka and Sons, which was reproduced by the High Court in G.K.K. Capital Markets (P.) Ltd. Para 6 to para 9 of Dhanuka and 9 (2011) 339 ITR 319 (Cal) Sons read as under:

> "6. Mr. Sarkar, the learned advocate appearing on behalf of the revenue, has, on the other hand, supported the order passed by the Tribunal and has contended that the assessee itself having failed to produce material in support of its contention, the Assessing Officer rightly assessed the deductible income on proportionate basis. Mr. Sarkar submits that the same is in conformity with Rule 8D of the Income tax Rule and thus, we should not interfere with the order passed by the Tribunal.
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> 7. After hearing the learned counsel appearing for the parties and after going through the materials on record and the decisions cited by Mr. Khaitan, we find that the Supreme Court in the cases of CIT v. Maharastra Sugar Mills Ltd. [1971] 82 ITR 452 and Rajasthan State Warehousing Corpn. v. CIT [2000] 242 ITR 450/109 Taxman 145 having held that where there is one indivisible business giving rise to taxable income as well as exempt income, the entire expenditure incurred in relation to that business would have to be allowed even if a part of the income earned from the business is exempt from tax, section 14A of the Act was enacted to overcome those judicial pronouncements. The object of section 14A of the Act is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income.
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> 8. In the case before us, there is no dispute that part of the income of the assessee from its business is from dividend which is exempt from tax whereas the assessee was unable to produce any material before the authorities below showing the source from which such shares were acquired. Mr. Khaitan strenuously contended before us that for the last few years before the relevant previous year, no new share has been acquired and thus, the loan that was taken and for which the interest is payable by the assessee was not for acquisition of those old shares and, therefore, the authorities below erred in law in giving benefit of proportionate deduction.
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> 9. In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available

in the hands of the assessee at the relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant assessment year, no interest is payable by the assessee for acquiring those old shares. In the absence of any such materials placed by the assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the special knowledge of the assessee, the assessing authority took a most reasonable approach in assessment."

27) We have already stated as to how the two divergent opinions have emerged from different High Courts and the respective reasons in support of these conflicting outcome. Obviously, assessees are banking upon the reasons which prevailed with the High Courts that have taken the view which are favourable to the assessees and the Revenue is relying upon the reasoning given by Delhi High Court as well as Calcutta High Court in Dhanuka and Sons case. Therefore, it may not be necessary to give a detailed narrative of the arguments which were advanced by various counsel appearing for the assessees as well as counsel for the Revenue. A brief resume of their submissions would serve the purpose.

28) Insofar as assessees are concerned, their arguments are recapitulated in brief hereinbelow:

(i) The holding of investment in group companies representing controlling interest, amounts to carrying on business, as held in the various cases.

(ii) Notwithstanding that dividend income is assessable under the head "income from other sources", in view of the mandatory prescription in Section 56 of the Act, the nature of dividend income has to be ascertained on the facts of the case. Where dividend is earned on shares held as stock-in-trade/shares purchased for acquiring/retaining controlling interest, dividend income is in the nature of business income.

(iii) Interest paid on loans borrowed for acquiring shares representing controlling interest in the investee company is allowable business expenditure in terms of Section 36(1)(iii) of the Act, since acquiring controlling interest in companies and managing, administering, financing and rehabilitating such companies are for business and/or professional purposes and not for earned dividend.

(iv) Conversely, interest paid on funds borrowed for investment in shares representing controlling interest does not represent expenditure incurred for earning dividend income and is not allowable under Section 57(iii) of the Act (prior to introduction of Section 14A).

29) Basing their case on the aforesaid principles, it was argued that when the shares were acquired, as part of promoter holding, for the purpose of acquiring controlling interest in the company, the dominant object is to keep control over the management of the company and not to earn the dividend from investment in shares. Whether dividend is declared/earned or not is immaterial and, in either case, the assessee would not liquidate the shares in investee companies. Therefore, no expenditure was made 'in relation to' the income i.e. the dividend income and, therefore, Section 14A would not be attracted. In this hue, it was submitted that Section 14A was to be accorded plain and grammatical interpretation meaning thereby mandating and requiring a direct and proximate nexus/link between the expenditure actually incurred and the earning of the exempt income. It was also argued that even if contextual/purposive interpretation is to be given, that also called for direct and proximate connection between the expenditure incurred and earning of dividend. According to the learned counsel appearing for the assessees, the legislative intention behind inserting Section 14A in this statute was to exclude both, viz. the receipts which are exempt under the provisions of the Act as well as expenditure actually incurred 'in relation thereto' from entering into the computation of assessable income, so as to remove the double benefit to the assessee (i) in the form of exempt income, on which no tax is leviable; and (ii) providing deduction in respect of expenditure actually incurred which directly resulted in the earning of exempt income by the assessee.

30) Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue, on the other hand, made a fervent plea to accept the view taken by the Delhi High Court. He submitted that the objective behind insertion of Section 14A of the Act manifestly pointed out that expenditure incurred in respect of income earned, which is exempted from tax, has to be disallowed. He also pointed out that this message was eloquently brought out by this Court in Walfort Share and Stock Brokers P Ltd. case. Otherwise, argued the learned senior counsel, the assessee will get double benefit, one, in the form of exemption from income tax insofar as dividend income is concerned and other by getting deduction on account of expenditure as well. He, thus, submitted that expression 'in relation to' had to be given expansive meaning in order to sub-serve the purpose of the said provision. He also emphasised that literal meaning of Section 14A of the Act pointed towards that and that was equally the purpose behind the insertion of Section 14A as well.

31) We have given our thoughtful consideration to the argument of counsel for the parties on both sides, in the light of various judgments which have been cited before us, some of which have already been taken note of above.

32) In the first instance, it needs to be recognised that as per section 14A(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 expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.
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> 33) There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act.

The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assessees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

34) Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share and Stock Brokers P Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.

"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..

xxx xxx xxx The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14 A."

35) The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assessees to have controlling interest in the investee companies have to fail and are, therefore, dismissed.

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 assessees 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.

41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. 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. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.

42) Civil Appeal No. 1423 of 2015 is filed by M/s. Avon Cycles Limited, Ludhiana, wherein the AO had invoked section 14A of the Act read with Rule 8D of the Rules and apportioned the expenditure. The CIT(A) had set aside the disallowance, which view was upturned by the ITAT in the following words:

> "...Admittedly the assessee had paid total interest of Rs.2.92 crores out of which interest paid on term loan raised for specific purpose totals to Rs.1.70 crores and balance interest paid by the assessee is Rs.1.21 crores. The funds utilized by the assessee being mixed funds and in view of the provisions of Rule 8D(2)(ii) of the Income Tax Rules the disallowance is confirmed at Rs.10,49,851/-, we find no merit in the ad hoc disallowance made by the CIT (Appeals) at Rs.5,00,000/-. Consequently, ground of appeal raised by the Revenue is partly allowed and ground raised by the assessee in cross-objection is allowed..." Taking note of the aforesaid finding of fact, the High Court has dismissed the appeal of the assessee observing as under:
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> "In the present case, after examining the balance-sheet of the assessee, a finding of fact has been recorded that the funds utilized by the assessee being mixed funds, therefore, the interest paid by the assessee is also an interest on the investments made. Such being a finding of fact, we do not find that any substantial question of law arises for consideration of this Court." After going through the records and applying the principle of apportionment, which is held to be applicable in such cases, we do not find any merit in Civil Appeal No. 1423 of 2015, which is accordingly dismissed.
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> 43) Few appeals are filed by the Revenue against the assessees which pertained to the period prior to the introduction of Rule 8D of the Rules. Here, the case is decided in favour of the assessees also on the ground that Rule 8D of the Rules is prospective in nature and could not have been made applicable in respect of the Assessment Years prior to 2007 when this Rule was inserted. This view has already been upheld by this Court in Civil Appeal No. 2165 of 2012 (Commissioner of Income Tax, Mumbai v. M/s. Essar Teleholdings Ltd. through its Manager), pronounced on January 31, 2018, that the said Rule is prospective in nature. On this ground alone, these appeals of the Revenue fail as it is not necessary to go into the other issues.
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> 44) To sum up:
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> (a) Appeals of the assessees, i.e. Civil Appeal Nos. 104-109, 110-112, 130, 1423 of 2015, are dismissed.
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> (b) Appeals of the Revenue, i.e. Civil Appeal Nos. 3267, 19614, 10096 of 2013, 8596 of 2014, 18019 of 2017, 115, 123, 6590 of 2015, Civil Appeals arising out of SLP (C) Nos. 27054, 31417 of 2016, 20475, 23123, 32405 of 2017, Diary Nos. 36413, 39820, 39823, 41890, 41903, 41922 of 2017 and 1146 of 2018 are dismissed.

(c) Appeal of the Revenue, i.e. Civil Appeal arising out of Diary No. 41203 of 2017, is allowed.

....J. (A.K. SIKRI) ....J. (ASHOK BHUSHAN) NEW DELHI;

FEBRUARY 12, 2018.