आयकर अपीलीय अधिकरण "डी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य **एवं**
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5445/Mum/2017
(**निर्धारण वर्ष** / Assessment Year:2014-15)

Income Tax Officer-3(1)(2) Aaykar Bhavan, M.K. Road Mumbai-400 020.	**बनाम**/ Vs.	**M/s. Devkant Synthetics (India) Pvt.Ltd.** 1006, Raheja Centre, Nariman Point Mumbai-400 021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAACD-2102- K**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Appellant by	:	Abhi Ram Kartikeyan - Ld.DR
Respondent by	:	Neel Khandelwal - Ld.AR

सुनवाई की तारीख/ **Date of Hearing**	:	14/03/2019
घोषणा की तारीख / **Date of Pronouncement**	:	19/03/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-8/IT-345/16-17* dated 29/06/2017 *qua* deletion of certain addition u/s 14A. The grounds of appeal read as under: -

1. Whether on the facts and circumstances and in law, the Ld.CIT(A) was right in deleting the disallowance determined under-section 14A read with rule 8D by excluding the business investment i.e. Stock-in-trade of Shares, for the purpose of determining disallowance when stock-in-trade is nothing but Business Investment.
2.The Hon'able IT AT has granted relief upon the decision of the Bombay High Court judgment in the Case of M/s India Advantage Securities Ltd. The Department has not accepted the decision of the Bombay High Court in the case of India Advantage Securities Ltd, on Merit but only because of the Smallness of tax effect involved on appeal (SLP) has been pled against the same."

2.1 The assessment for impugned AY was framed by Ld. Income Tax Oficer-3(1)(2), Mumbai [AO] u/s. 143(3) on 30/12/2016 wherein the income of the assessee was determined at Rs.384.90 Lacs after disallowance u/s 14A for Rs.412.46 Lacs as against revised returned loss of Rs.27.56 Lacs. The assessee being *resident corporate entity* is stated to be engaged in *dealing in shares and securities.* The disallowance made by Ld. AO u/r 8D is the sole subject matter of present appeal before us.

2.2 During assessment proceedings, it transpired that the assessee earned exempt dividend income of Rs.37.82 Lacs and did not offer any disallowance against the same since the shares were held as *stock-in-trade.* The assessee, vide reply dated 30/11/2016 defended it stand and also drew attention to the order of this Tribunal in assessee's own case for AYs 2010-11 & 2011-12 and the order of first appellate authority for AYs 2012-13 & 2013-14 to submit that the disallowance may be restricted to 5% of exempt income. However, not satisfied, Ld. AO noting that the funds were mixed funds, opined that the disallowance was to be worked out in terms of Rule 8D irrespective of the fact whether the shares were held as stock-in-trade or as an investment. Rejecting the assessee's submissions vide *para 6.6,* Ld. AO worked our aggregate disallowance as per Rule 8D(2) for Rs.412.46 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.380.24 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.32.21 Lacs. The Ld. first appellate authority, relying upon the decision of this Tribunal rendered for AYs 2009-10 to 2011-12, restricted the disallowance to 5% of exempt income. Aggrieved, the revenue is in further appeal before us wherein Ld. AR has submitted that the issue stood covered by the order of this Tribunal in assessee's own case for earlier years vide ITA Nos. 2663-2665/Mum/2015 dated 28/10/2015. The Ld. DR supported the workings made by Ld. AO.

3. We have carefully heard the rival submissions and perused relevant material on record. The undisputed position that emerges is that the assessee has been saddled with disallowance u/r 8D on account of interest as well as administrative expenditure. The first appellate authority has granted relief primarily by relying upon the order of this Tribunal passed on 28/10/2015 and restricted the impugned disallowance to 5% of exempt income. However, the perusal of the Tribunal order for earlier years reveal that the said order primarily draws strength from the fact that the shares held as stock-in-trade were not to be considered while working out the disallowance u/s 14A.

4. However, we find that the aforesaid proposition shall require revisit in view of the recent judgment of Hon'ble Apex Court rendered in *Maxopp Investment Ltd. Vs CIT [12/02/2018 91 Taxmann.com 154]* wherein Hon'ble court has approved the applicability of disallowance to shares held as *stock-in-trade* as well. Since, the said binding judicial

precedents shall have direct bearing on the issue and certain pertinent observations have been made by Hon'ble court in the said judgment which require re-appreciation of the issue, we deem it fit to reverse the conclusion of first appellate authority and restore the matter back to the file of Ld. AO for fresh adjudication, keeping all the issues open. Needless to add that reasonable opportunity of being heard shall be granted to the assessee, who, in turn, is directed to substantiate his stand, in this regard.

5. The appeal stands allowed for statistical purposes.

Order pronounced in the open court on 19th March, 2019.

Sd/-	**Sd/-**
(Mahavir Singh)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/03/2019
Sr.PS, Jaisy Varghese

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**