IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER AND
DR. S.T.M. PAVALAN, JUDICIAL MEMBER

ITA No. 7845/Mum/2011
Assessment Year: 2008-09

ACIT 10(1) 455 Aayakar Bhavan, 4th Floor. M.K. Road Mumbai	Vs.	M/s HSBC Invest Direct Securities (India) Ltd. (formerly known as M/s IL&FS Investment Securities Ltd.) Dhana Singh Processor Premises, J.B. Nagar, Andheri Kurla Road, Andheri (E) Mumbai 400 059 **PAN: AABCI 4793 G**
(Appellant)		(Respondent)

Revenue by : Shri S.K. Mahapatra
Assessee by : Shri D.V. Lakhani

Date of hearing : 27.06.2013
Date of Pronouncement : 19.07.2013

ORDER

PER DR. S.T.M. PAVALAN, JM:

This appeal filed by the Revenue is directed against the order of the Ld.CIT(A) -21, Mumbai dated 03.08.2011 for the Assessment Year 2008-09.

2. The solitary issue arising out of the grounds of appeal relates to the disallowance of Rs.72,58,000/- made by the AO by invoking Section 14A of the I.T. Act read with Rule 8D of the I.T. Rules and the same restricted by the Ld.CIT(A) to Rs.13,88,555/-.

3. The relevant facts are that the assessee, a company engaged in the business of broking and distribution of financial products, during the year under consideration, had claimed a dividend income of Rs.81,44,981/- as exempt income. In this regard, the assessee had made a self disallowance of Rs.48,76,737/- in the return/

computation of income. However, in the assessment framed u/s 143(3), the AO having not satisfied with the working of the assessee, computed the disallowance at Rs.72,58,000/-. The AO considered the opening balance of investment at Rs.29,00,22,835/- & closing balance at Rs.1,91,20,539/- thereby had taken the average value of investment at Rs.15,45,71,687/- and consequently arrived at the said disallowance.

3.1 On appeal, the Ld.CIT(A) directed the AO to consider and reduce the disallowance u/s 14A r.w.s. 8D at Rs.13,88,555/-. According to the Ld.CIT(A), the investment of Rs.25 crores in UTI Money Market Fund – Growth Plan appearing in opening balance of investment was not required to be considered under Rule 8D for the purpose of computing the average value of investments as the same was yielding taxable income. Aggrieved by the impugned order, the Revenue is in appeal before us.

4. Having heard both the parties and perused the material on record, it is relevant to mention that the issues before us are two fold namely (i) the correctness of the figures as regards the opening balance and closing balances taken into account for the purpose of computing the disallowance and (ii) whether the assessee's claim for a further reduction of the self disallowance already made by it in the return of income can be made at the first appellate proceedings without having the recourse to file the revised return.

4.1 As regards the correctness of the figures, the assessee's investments in shares are reflected in balance sheet under the head current assets as "stock in trade". Further details are appearing in Schedule E under the head "stock in trade" (note-15) A. The note No. 15 to the balance sheet is showing investment in "UTI Money Market Fund-Growth Plan" at Rs.25 crores. In the P & L Account, the assessee has offered income from operations, the details of which are given in Schedule 'G'. As per Schedule 'G', Part-II – Income From Securities is offered at Rs.7,05,47,419/-. The further details in Schedule G of taxable income shows the opening balance of Rs.25 crores and purchases during the year at Rs.10 crores, making total of Rs.35 crores and the sale at Rs.35,11,49,544/-. Thus, the income of

Rs.11,49,544/- has been offered by the assessee on this investment in UTI Money Market Fund- Growth Plan. In the facts and circumstances, this investment of Rs.25 crores appearing in opening balance of investment is not required to be considered under Rule 8D for the purpose of computing the average value of investments as the same has yielded taxable income. As regards the second issue, it is pertinent to note that there are number of decisions to the effect that the AO and also the CIT(A) could entertain a fresh claim during assessment/appellate proceedings if the assessee is legally entitled for such deductions. The CBDT, in Circular No.669 also has clarified that if evidences subsequently furnished, rectification should be carried out. In our view, the Ld.CIT(A) has correctly relied on the decisions of the Bombay High Court in the case of Chicago Pneumatic India Ltd (15 SOT 252), Delhi High Court in the case of CIT vs. Jal Parabolic Springs Ltd, Allahabad High Court in the case of Universal Subscription Agencies Pvt. Ltd. (293 ITR 244) and the ITAT in the case of Emerson Network (2009) 19 DTR 441 for admitting the claim of the assesee. In view of that matter, we do not find any infirmity in the order of the Ld.CIT(A) directing the AO to consider and reduce the disallowance u/s 14A r.w.s. 8D at Rs.13,88,555/- and the same is upheld.

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

Order pronounced in the open court on this 19th day of July, 2013.

Sd/-	**Sd/-**
(P.M. JAGTAP)	**(Dr. S.T.M. PAVALAN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 19.07.2013.
*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR "H" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.