

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri N.V. Vasudevan, Judicial Member**

**I.T.A. No. 1351/KOL/ 2013
Assessment Year: 2009-2010**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-1, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***

-Vs.-

***M/s. Teenlok Advisory Services Pvt. Limited,.....Respondent
102, Windsor, Vidyanagri Road,
Santacruz (East),
Mumbai-400 098
[PAN: AACCT 3123 E]***

Appearances by:

*Shri S.S. Alam, JCIT, Sr. D.R., for the Department
Shri Subash Agarwal, Advocate, for the assessee*

Date of concluding the hearing : April 08, 2016
Date of pronouncing the order : June 08, 2016

O R D E R

Per Shri P.M. Jagtap :-

This appeal is preferred by the Revenue against the order of the Id. Commissioner of Income Tax-(Appeals)-XXIV, Kolkata dated 22.02.2013.

2. The issue raised in Ground No. 1 relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.2,42,70,464/- made by the Assessing Officer by way of disallowance under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962.

3. The assessee in the present case is a Company, which is engaged in the business of dealing in shares and securities. The return of income for

the year under consideration was filed by it on 24.09.2009 declaring total income at 'nil'. In the said return, dividend income of Rs.92,64,034/- received during the year under consideration was claimed to be exempt by the assessee and a disallowance of Rs.1,20,000/- was offered under section 14A on account of expenditure incurred in relation to the said exempt income. The Assessing Officer having regard to the accounts of the assessee was not satisfied about the correctness of the disallowance offered by the assessee under section 14A on account of expenditure in relation to exempt income. He, therefore, invoked Rule 8D and computed the disallowance to be made under section 14A on account of expenditure incurred in relation to the exempt income at Rs.2,43,90,464/-. Accordingly, the difference of Rs.2,42,70,464/- (Rs.2,43,90,464/- minus Rs.1,20,000/-) was added by the Assessing Officer to the total income of the assessee.

4. The disallowance made by the Assessing Officer under section 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee before him as well as the case laws cited in support, the Id. CIT(Appeals) deleted the said disallowance made by the Assessing Officer for the following reasons given in paragraph no. 2.3 of his impugned order:-

"2.3. I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Id. A.R. During the course of the appellate proceedings, the Id. A.R. has explained that the appellant is engaged in the business of share trading and all the shares have been held by the appellant as stock-in-trade. The Id. A.R. has stated that the appellant has received dividend income of Rs.92,64,034/- on shares which have been held as stock-in-trade. The balance-sheet of the appellant company reveals that it had the stock in trade amounting to Rs.10,10,27,014/- and Rs.60,97,40,236/- as at 31.03.2009 and 31.03.2008 respectively. The balance sheet also reveals that all the shares held by the appellant has been shown as stock-in-trade. The Id. A.R. has informed that the AO has calculated the disallowance u/s 14A by treating the stock-in-trade as investment in shares. In this regard, the Id. AR

has relied on the decision of the Karnataka High Court in the case of CCI Limited -vs.- JCIT [2012] 206 Taxman 563 (Ker.). In this case, the Hon'ble Court has held that when the assessee has not retained the shares with the intention of earning dividend and the dividend income is incidental to his business of sale of shares, which remained unsold, it could not be said that the expenditure incurred in acquiring the shares can be apportioned to the extent of dividend income and that can be disallowed under section 14A. The ld. AR has also relied on the decision of the Hon'ble Kerala High Court in the case of CIT -vs.- Smt. Leena Ramchandran [2011] 339 ITR 296 (Ker.). The Hon'ble Kerala High Court has held that the assessee would be eligible for deduction u/s 36(1)(iii) on borrowed fund utilized for acquisition of shares only if shares are held as stock-in-trade which arises only if the assessee is engaged in trading in shares. As regards the acquisition of shares in the form of investment, the Hon'ble High Court has held that the only benefit derived by the assessee is dividend and the disallowance u/s 14A is attracted for acquisition of shares in the form of investments. The ld. AR has explained that the appellant company is involved in trading in shares and the shares are held as stock-in-trade. The ld. AR has argued that the AO has wrongly calculated the disallowance u/s 14A read with Rule 8D by treating the stock-in-trade as investments in shares. The decision of the Hon'ble Karnataka High Court in the case of CCI Ltd. (supra) and also the decision of the Hon'ble Kerala High Court in the case of Smt. Leena Ramchandran (supra) are squarely applicable to the facts of the case. The appellant company has already disallowed a sum of Rs.1,20,000/- u/s 14A in relation to the dividend income which is exempt from tax. Considering the facts of the case, I am of the view that the appellant has held the shares as stock-in-trade and the AO has wrongly treated its stock in trade as investment in shares and computed the disallowance of Rs.2,43,90,464/- u/s14A read with Rule 8D. The appellant has already made a disallowance of Rs.1,20,000/- u/s 14A. In view of it, the AO is directed to delete the disallowance of Rs.2,42,70,464/- u/s 14A. This ground of appeal is allowed".

5. The ld. D.R., at the outset, submitted that the issue involved in Ground No. 1 of the Revenue's appeal relating to the disallowance under section 14A on account of expenditure in relation to the earning of exempt dividend income received on shares held as stock-in-trade is squarely covered in favour of the Revenue by the decision of the Hon'ble

Calcutta High Court in the case of Dhanuka & Sons –vs.- CIT (2011) 339 ITR 319. He contended that the Hon'ble Mumbai Bench of the ITAT in its Third Member decision rendered in the case of DH Securities Pvt. Ltd. – vs.- DCIT (2014) 41 taxmann.com 352 has decided a similar issue in favour of the Revenue by following the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra) by holding that the same is squarely covered by the principles laid down by the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra).

6. The ld. counsel for the assessee, on the other hand, strongly supported the impugned order of the ld. CIT(Appeals) holding that section 14A and Rule 8D have no application to make a disallowance on account of expenditure in relation to the exempt dividend income which is earned on shares held as stock-in-trade and not investment. He also cited by the decision of the Hon'ble Kerala High Court in the case of CIT – vs.- Smt. Leena Ramachandran [339 ITR 296 (Ker.)] relied upon by the ld. CIT(Appeals) in his impugned order, wherein it was held that the assessee would be entitled for deduction of interest under section 36(1)(iii) of the Act on the funds borrowed and utilized for the acquisition of shares as stock-in-trade and the disallowance under section 14A is attracted only when the acquisition of shares is in the form of investment and the benefit derived by the assessee is only in the form of dividend income, which is exempt from tax. He also relied on the decision of the Hon'ble Karnataka High Court in the case of CCI Limited – vs.- JCIT [206 Taxman 563], wherein it was held that 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 under section 14A.

7. The ld. counsel for the assessee also cited the decision of the Mumbai Bench of ITAT in the case of CIT -vs.- India Advantage Securities Limited (ITA No. 6711/MUM/2011 dated 14.09.2012), wherein the decision of the Hon'ble Karnataka High Court in the case of CCI Limited-vs.- JCIT (supra) has been followed by the Tribunal to hold that the disallowance of interest in relation to the dividend received from trading shares could not be made. He submitted that the appeal filed by the Revenue against the said order of the Tribunal passed in the case of India Advantage Securities Limited (supra) has been dismissed by the Hon'ble Bombay High Court vide its order dated April 13, 2015 passed in ITA No. 1131 of 2013 by holding that there was no substantial question of law involved. Relying on the decision of the Hon'ble Gujarat High Court in the case of Nirma Industries Limited reported in 283 ITR 402, he contended that the order of the Tribunal in the case of India Advantage Securities Limited thus has merged with the order of the Hon'ble Bombay High Court and the Third Member decision of the Tribunal in the case of DH Securities Pvt. Limited (supra) relied upon by the ld. D.R. stands impliedly overruled. He also relied on the latest decision of the Hon'ble Bombay High Court dated 25.02.2016 rendered in the case of HDFC Bank -vs.- DCIT [67 taxmann.com 42], wherein the action of the Tribunal in not following the decision of its Coordinate Bench in the case of India Advantage Securities Limited (supra) was disapproved by the Hon'ble Bombay High Court by observing that when the appeal of the Revenue against the decision of the Tribunal in the case of India Advantage Securities Limited was dismissed by the Hon'ble High Court, the Coordinate Benches of the Tribunal were obliged to follow the said decision.

8. As regards the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra) relied upon by the ld. D.R., the ld. counsel for the assessee contended that the issue involved in the said case before the Hon'ble High Court was in regard to applicability of section 14A with respect to "investment in shares" and not "stock-in-trade". He contended

that although there was a reference to “business of trading in shares” in Question No. (ii) referred to the Hon’ble Calcutta High Court in the case of Dhanuka & Sons (supra), the same was of no consequence as it was only a part of entire indivisible/composite business, which also included granting of loans and advances and investment in shares. He contended that even though in the Third Member decision rendered by the Mumbai Bench in the case of D.H. Securities (P) Limited, the decision of the Hon’ble Calcutta High Court in the case of Dhanuka & Sons was followed to decide a similar issue against the assessee by holding that the same is squarely covered by the said decision, the Third member decision has already been overruled impliedly by the decision of the Hon’ble Bombay High Court rendered in the case of India Advantage Securities (supra). He contended that Third Member decision in the case of D.H. Securities (P) Limited even otherwise has wrongly read the decision of the Hon’ble Calcutta High Court in the case of Dhanuka & Sons (supra). He also contended that the Hon’ble Calcutta High Court in the case of Dhanuka & Sons (supra) had no occasion to consider the applicability of Rule 8D or effect thereof as the same has come into force w.e.f. A.Y. 2008-09 whereas the assessment year involved in the said case was A.Y. 1998-99.

9. As regards the applicability of Rule 8D, the ld. counsel for the assessee placed reliance on the decision of the Coordinate Bench of this Tribunal in the case of DCIT -vs.- Gulshan Investment Co. Limited (ITA 666/KOL/2012 dated March 11, 2013), wherein it was held that Rule 8D(2)(ii) and (iii) can only be applied in the situations in which shares are held as investments and this rule will not have any application when the shares are held as stock-in-trade. It was held that the application of Rule 8D(2)(i), however, is not excluded and in a case where shares are held as stock-in-trade and not as investments, the disallowance even under rule 8D is restricted to the expenditure directly relatable to earning of exempt income. It was held that section 14A thus will still apply in the cases where shares are held as stock-in-trade but the disallowance to be made under section 14A read with Rule 8D will be

restricted to direct expenses incurred in relation to the earning of exempt dividend income. The ld. counsel for the assessee contended that even if section 14A and Rule 8D is held to be applicable in case of expenditure incurred in relation to the earning of exempt dividend income on shares held as stock-in-trade, the computation of such disallowance has to be made strictly as per the language employed in Rule 8D.

10. Without prejudice to his main argument and as an alternative, the ld. counsel for the assessee contended that the disallowance under section 14A has been wrongly worked out by the Assessing Officer under Rule 8D by taking the entire value of stock-in-trade instead of taking the value of shares, which actually yielded dividend income during the year under consideration. In this regard, he relied on the decision of the Coordinate Bench of this Tribunal in the case of REI Agro Limited -vs.- DCIT (ITA Nos. 1331 & 1423/KOL/2011 dated 19.06.2013), wherein it was held that the value of only those shares are required to be considered in computation as per Rule 8D, which have yielded dividend income. He pointed out that the said decision rendered by the Coordinate Bench of this Tribunal in the case of REI Agro Limited has been affirmed by the Hon'ble Calcutta High Court vide its order dated 19.04.2014 in ITAT No. 220 of 2013. He contended that even if section 14A read with Rule 8D is held to be applicable in the case of the assessee, the Assessing Officer may be directed to compute the disallowance as per Rule 8D by taking into consideration only those shares, which have yielded dividend income in the year under consideration.

11. In the rejoinder, the ld. D.R. invited our attention to the provisions of section 14A and submitted that sub-section (1) of section 14A spells out in unambiguous terms that the expenditure incurred by the assessee in relation to income which does not form part of the total income of the Act is to be disallowed. He contended that the reference here is to the "income which does not form part of the total income" without making any further distinction between the source of such income. According to

him, whether the exempt dividend income is earned from the purchase of shares for trading purpose and held as stock-in-trade or from the purchase of shares for investment purpose, therefore, is immaterial and the stipulation of section 14A(1) is clear in the sense that if there is any exempt income, the disallowance of expenditure under section 14A in relation to such income is automatic. He contended that even the word 'investment' used in Rule 8D refers to the making of purchase of shares and when the dividend earned on such shares is exempt, the provisions of section 14A read with Rule 8D are clearly applicable.

12. The ld. D.R. contended that while deciding the issue relating to the applicability of section 14A read with Rule 8D for making disallowance on account of expenditure in relation to the exempt dividend income earned on shares held as stock-in-trade, the very purpose of introducing the provisions of section 14A in the Statute needs to be taken into consideration. In this regard, he invited our attention to the Explanatory Notes given in the Finance Bill, 2001, wherein the purpose of inserting section 14A was clarified as under:-

"Certain incomes are not includible 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 Id. D.R. also relied on CBDTs Circular No. 5/2004 dated 11.02.2014, wherein it has been further clarified and emphasized that legislative intent behind introduction of section 14A is to allow only that expenditure which is relatable to earning of income and it, therefore, follows that the expenses, which are relatable to exempt income are to be considered for disallowance.

13. The Id. D.R. finally reiterated that the issue under consideration is squarely covered by the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons -vs.- CIT (supra) in favour of the Revenue and submitted that although the Id. counsel for the assessee has placed reliance on various case laws in support of the assessee's case on this issue, there is no decision either of the Hon'ble Supreme Court or that of the Hon'ble Calcutta High Court rendered subsequently taking a view contrary to the decision rendered in the case of Dhanuka & Sons. He contended that even the Mumbai Bench of this Tribunal in its Third Member decision rendered in the case of DH Securities Pvt. Limited has held categorically that the issue under consideration is squarely covered by the principles laid down by the Hon'ble Calcutta High Court in the case of Dhanuka & Sons. He pleaded that the said Third Member decision has a force of Special Bench and this Division Bench of the Tribunal, therefore, has to follow the same as a binding precedent.

14. We have considered the rival submissions and also perused the relevant material available on record. The issue that arises for our consideration in the present context is whether the provisions of section 14A can be invoked to make a disallowance on account of expenditure incurred in relation to the exempt income in the form of dividend received by the assessee on the shares held as stock-in-trade. In this regard, the Id. D.R. has strongly relied on the Third Member decision of the Tribunal in the case of D.H. Securities Pvt. Limited (supra), wherein a similar issue was involved and while deciding the same, the Id. Accountant Member took a view that section 14A has application even in

the case where the exempt dividend income is received from the shares held as stock-in-trade and the disallowance on account of expenditure incurred in relation to such exempt income can be made by applying the said provision. The Id. Judicial Member, however, did not agree with this view of the Id. Accountant Member and wrote a dissenting order taking a contrary view that disallowance under section 14A cannot be made where dividend income has been earned on the shares held as stock-in-trade by relying, inter alia, on the decision of the Hon'ble Karnataka High Court in the case of CCI Limited (supra), which has been relied upon by the Id. CIT(Appeals) in his impugned order while deciding the issue in favour of the assessee. When the matter was referred to a Third Member to resolve the point of difference, the decision of the Hon'ble Karnataka High Court in the case of CCI Limited (supra) as well as various other judicial pronouncements were cited on behalf of the assessee in support of its case. The Id. Third Member, however, held that the issue is squarely covered by the principles laid down by the Hon'ble Bombay High Court in the case of Godrej Boyce Manufacturing Company Limited (supra) as also by the judgment of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra). Accordingly, he followed the same and concurred with the view of the Id. Accountant Member that the disallowance under section 14A can be made in conformity with law even in cases where dividend income has been earned on the shares held as stock-in-trade.

15. At the time of hearing before us, the first contention raised by the Id. counsel for the assessee is that the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons is not directly applicable to the issue under consideration and the same has wrongly been read by the Id. Third Member in the case of DH Securities Pvt. Limited while applying the same to decide the issue against the assessee. However, as rightly contended by the Id. D.R., the Third Member decision in the case of DH Securities Pvt. Limited (supra) is binding on us having the force of a Special Bench and it is, therefore, not permissible for us to take a different view than the one taken in the Third Member decision rendered

in the case of DH Securities Pvt. Limited regarding the applicability of the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons to the issue under consideration. Moreover, a perusal of the judgment passed by the Hon'ble Calcutta High Court in the case of Dhanuka & Sons shows that it was clearly mentioned in Question No. 2 itself referred to the Hon'ble Calcutta High Court that the entire interest expenditure was incurred by the assessee from its indivisible business of trading of shares, granting of loans and advances and investing in shares. It was also mentioned as undisputed fact in paragraph no. 8 of the judgment that part of the income of the assessee from its business was from dividend, which was exempt from tax. The assessee in the case of Dhanuka & Sons thus was very much involved in the business of trading in shares and the undisputed fact noted by the Hon'ble High Court that part of income received in the form of exempt dividend income was from such business of the assessee is sufficient to show that dividend income was received by the assessee even on the shares held as stock-in-trade. Since the applicability of section 14A to make a disallowance on account of expenses incurred in relation to exempt dividend income was upheld by the Hon'ble High Court after taking note of all these facts of the case, it follows that the principles laid down by the Hon'ble Jurisdictional High Court in the case of Dhanuka & Sons (supra) are squarely applicable to the issue under consideration as rightly held by the Id. Third Member in the case of DH Securities Pvt. Limited (supra).

16. The Id. counsel for the assessee has contended that the Hon'ble Mumbai Bench of this Tribunal in the case of India Advantage Securities Limited (supra) has decided a similar view in favour of the assessee by following the decision of the Hon'ble Karnataka High Court in the case of CCI Limited (supra) and since the appeal filed by the Revenue against the order of the Tribunal passed in the said case has been dismissed by the Hon'ble Bombay High Court, the order of the Tribunal has merged with the order of the Hon'ble Bombay High Court thereby overruling impliedly the Third Member decision in the case of DH Securities Pvt. Limited. In

this regard, even if the order of the Tribunal in the case of India Advantage Securities Limited (supra) is taken as merged with the order of the Hon'ble Bombay High Court passed in the said case, we are unable to comprehend as to how the Hon'ble Third Member decision of the Tribunal in the case of DH Securities Pvt. Limited gets overruled when it was not the subject matter of the appeal before the Hon'ble Bombay High Court nor even the same was cited or considered by the Hon'ble Bombay High Court while dismissing the appeal filed by the Revenue against the order of the Tribunal in the case of India Advantage Securities Limited. Be that as it may, the fact that remains to be seen is that the issue under consideration is squarely covered by the principles laid down by the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra) as held by the Id. Third Member in the case of DH Securities Pvt. Limited (supra) and as further explained by us and there is no decision of the Hon'ble Supreme Court or the decision of the Hon'ble Calcutta High Court rendered subsequently taking a different view, which has been brought to our notice. The decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons upholding the applicability of section 14A for making a disallowance on account of expenditure incurred in relation to the exempt income in the form of dividend earned by the assessee on shares held as stock-in-trade thus still holds the field and respectfully following the said decision of the Hon'ble Jurisdictional High Court, we hold that the provision of section 14A can be invoked in a case of exempt dividend income earned by the assessee from shares held as stock-in-trade and the expenses incurred in relation to such income can be disallowed by applying the said provision. The impugned order of the Id. CIT(Appeals) taking a different view on this issue is accordingly set aside and that of the Assessing Officer is restored back.

17. Having held that section 14A is applicable in the present case where the exempt dividend income is earned by the assessee from shares held as stock-in-trade, the next question that arises for our consideration is how to compute the disallowance to be made under section 14A on

account of expenses incurred in relation to such exempt income by applying Rule 8D. In this regard, the ld. counsel for the assessee has relied on the decision of the Coordinate Bench of this Tribunal in the case of Gulshan Investment Co. Limited (supra) to contend that even if section 14A read with Rule 8D is held to be applicable in the case of the assessee, the disallowance on account of expenditure incurred in relation to the earning of exempt dividend income on shares held as stock-in-trade can only be in respect of expenditure directly relatable to earning of exempt income by applying the Rule 8D(2)(i) and not in respect of indirect expenses as per Rule 8D(2)(i) and 8D(2)(ii), which are not applicable. It is observed that a similar contention was raised on behalf of the assessee before the Tribunal even in the case of DH Securities Pvt. Limited (supra) by placing reliance on the decision in the case of Gulshan Investment Co. Limited (supra). The ld. Accountant Member, with whom the ld. Third Member finally concurred, however, did not accept the same by relying on the decision of Special Bench of the Tribunal in the case of Daga Capital Management Pvt. Limited (supra), wherein a similar contention was rejected by the Tribunal by observing that the reference in Rule 8D is to the "value of investment" and not to the "assets held as investment". It was held that a person may make investment in shares and the shares so purchased may be held either as stock-in-trade or investment. The word "investment" in Rule 8D refers to the making of purchase of shares and not holding it as investment. The applicability of Rule 8D to compute the disallowance to be made under section 14A on account of expenditure in relation to the exempt dividend income earned by the assessee from shares held as stock-in-trade thus was upheld by the Tribunal in its Third Member decision rendered in the case of DH Securities Pvt. Limited and respectfully following the same, we reject the contention of the ld. counsel for the assessee that the disallowance in the case of the assessee can be restricted only to direct expenses incurred in relation to the earning of exempt dividend income by applying Rule 8D(2)(i).

18. Before us, the ld. counsel for the assessee has raised an alternative contention that even if section 14A read with Rule 8D is held to be applicable in the case of the assessee, the Assessing Officer may be directed to compute the disallowance as per Rule 8D by taking into consideration only those shares which have yielded dividend income in the year under consideration. Since this issue raised by the ld. counsel for the assessee as an alternative contention is squarely covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal in the case of REI Agro Limited (supra), we direct the Assessing Officer to compute the disallowance as per Rule 8D by taking into consideration only those shares, which have yielded dividend income in the year under consideration. The alternative contention of the ld. counsel for the assessee is accordingly accepted. Ground No. 1 of the assessee's appeal is thus partly allowed.

19. In Ground No. 2, the Revenue has challenged the action of the ld. CIT(Appeals) in treating the interest income of Rs.52,84,430/- as business income of the assessee instead of income from other sources.

20. In the assessment completed under section 143(3), interest income of Rs.52,84,426/- earned by the assessee during the year under consideration was brought to tax by the Assessing Officer under the head "income from other sources" instead of 'business income' as claimed by the assessee without assigning any reason and without even discussing the issue in his order. On appeal, the ld. CIT(Appeals) accepted the claim of the assessee on this issue and directed the Assessing Officer to assess the interest income as business income of the assessee instead of income from other sources after discussing the submissions made by the assessee as well as the case laws relied upon by the assessee in support of paragraph no. 3.3 of his impugned order, which reads as under:-

"3.3. I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the ld. AR. It has been informed that the clients have to give upfront margin of average 15% to 35%

of the exposure or outstanding position in the National Stock Exchange (NSE) in order to trade in Future & Options (F&O). The NSE does not accept Fixed Deposits as Margin Money from the clients directly. The client gives the cheque to the broker and the broker in turn take out the FDR and give to the Exchange as Margin Money for that particular client. As per the rules prescribed by the SEBI, the Broker can not utilize these FDRs for its own business purpose. In the present case, the broker is M/s. Anvil Share & Stock Broking Pvt. Ltd. and its client is the appellant i.e. M/ s. Teenlok Advisory Services Pvt. Ltd. It has been clarified that the appellant company had given the cheque to its broker i.e. Anvil Share & Stock Braking Pvt. Ltd. which took out the FDRs and gave to the NSE as Margin Money on behalf of the appellant. The bank had paid interest of Rs.52,84.426/- to the broker (i.e. M/s. Anvil Share & Stock Braking Pvt. Ltd.) on FDs in respect of above Margin Money. The broker in turn paid the interest of Rs.52,84,426/- to the appellant. The Assessing Officer has assessed the interest income of Rs.52,84,426/- as income from other sources without assigning any reason. The Ld. AR has relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs Govinda Choudhary & Sons (supra) wherein it has been held that interest can be assessed under the head "Income from Other Sources" only if it cannot be brought within one or the other of the specific heads of charge and the interest payable to the assessee partakes of the same character as the receipt for the payment of which he was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between them. The Ld. A/R has relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Koshika Telecom Ltd. [2006] 286 ITR 479 (Del) wherein it has been held that "where the income in the nature of interest flows from deposits made by the assessee which deposits are in turn inextricably linked to the business of the assessee, the income derived on such deposits cannot be treated as income from other sources. Therefore, income from interest on deposit was business income and not income from other sources." The Ld. A/R has also relied on the decision of CIT Vs. Chinna Nachimuthu Constructions [2008] 297 ITR 70 (Kar) wherein the Hon'ble Karnataka High Court has held that "as the investment of amount in fixed deposits by the assessee was only to secure a bank guarantee to be offered to KPTCL in order to acquire a contract work, it could not, therefore, be treated as an income from other sources and interest occurred on such fixed deposits had to be treated as business income only". In the present case, the appellant

had given the cheque to its broker M/s. Anvil Share & Stock Broking Pvt. Ltd. which had taken out the FDRs and given to the NSE as Margin Money on behalf of the appellant in order to trade in Future & Option (F & O). The bank had paid the interest of Rs.52,84,426/- on the FDs to the said broker in respect to the margin money given to the NSE and the broker in turn paid the above interest of Rs.52,84,426/- to the appellant company. The decisions of the Hon'ble Karnataka High Court in the case of Chinna Nachimuthu Constructions (supra) and the decision of the Hon'ble Supreme Court in the case of Govinda Choudhary & Sons (supra) are squarely applicable to the facts of the case. Accordingly, the AO is directed to assess the interest of Rs.52,84,426/- as business income under the head "profits and gains of business or profession" instead of treating it as income from other sources. This ground of appeal is allowed".

21. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the Id. CIT(Appeals) as well as before us, there was a direct nexus between the earning of interest income in question as well as the business income of the assessee, inasmuch as the same was earned on Fixed Deposits kept by the assessee as margin money with NSE through its broker in order to enable it to trade in Future & Options. The interest income earned on the said Fixed Deposits thus was directly attributable to the business of the assessee and the Id. CIT(Appeals), in our opinion, is fully justified in treating the same as business income of the assessee instead of income from other sources by relying on the decision of the Hon'ble Supreme Court in the case of Govinda Choudhury & Sons (supra) as well as the decision of the Hon'ble Karnataka High Court in the case of Chinna Nachimuthu Constructions (supra). We, therefore, uphold the impugned order of the Id. CIT(Appeals) on this issue and dismiss Ground No. 2 of the Revenue's appeal.

22. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on June 8, 2016.

**Sd/-
(N.V. Vasudevan)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 8th day of June, 2016

Copies to : (1) **Deputy Commissioner of Income Tax,
Circle-1, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

(2) **M/s. Teenlok Advisory Services Pvt. Limited,
102, Windsor, Vidyanagri Road,
Santacruz (East),
Mumbai-400 098**

(3) Commissioner of Income Tax(Appeals)-XXIV, Kolkata

(4) **Commissioner of Income Tax - ,Kolkata**
(5) **The Departmental Representative**
(6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.