



**आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**

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

1. आयकर अपील सं./I.T.A. No.6457/Mum/2017  
 (निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Asst. Commissioner of Income Tax-3(1)(2)</b> 6 <sup>th</sup> Floor, Room No.607 Aaykar Bhavan, M.K.Road Churchgate, Mumbai-20	<b>बनाम/ Vs.</b>	<b>Edelcap Securities Ltd.</b> Edelweiss House CST Road, Kalina Mumbai – 400 098
स्थायीलेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCE-9000-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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2. आयकर अपील सं./I.T.A. No 6458/Mum/2017  
 (निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Asst. Commissioner of Income Tax-3(1)(2)</b> 6 <sup>th</sup> Floor, Room No.607 Aaykar Bhavan, M.K.Road Churchgate, Mumbai-20	<b>बनाम/ Vs.</b>	<b>EC Commodity Ltd.</b> Edelweiss House CST Road, Kalina Mumbai – 400 098
स्थायीलेखा सं./जीआइआर सं./PAN/GIR No. <b>AACCE-0324-Q</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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3. आयकर अपील सं./I.T.A. No.6456/Mum/2017  
 (निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Asst. Commissioner of Income Tax-3(1)(2)</b> 6 <sup>th</sup> Floor, Room No.607 Aaykar Bhavan, M.K.Road Churchgate, Mumbai-20	<b>बनाम/ Vs.</b>	<b>Edelweiss Finance &amp; Investment Ltd.</b> Edelweiss House CST Road, Kalina Mumbai – 400 098
स्थायीलेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACC-2233-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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4. आयकर अपील सं./I.T.A. No.6459/Mum/2017  
 (निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Asst. Commissioner of Income Tax-3(1)(2)</b> 6 <sup>th</sup> Floor, Room No.607	<b>बनाम/ Vs.</b>	<b>ECL Finance Ltd.</b> Edelweiss House CST Road, Kalina
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Aaykar Bhavan, M.K.Road Churchgate, Mumbai-20		Mumbai – 400 098
स्थायीलेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCE-4916-D</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&amp;

5. आयकर अपील सं./I.T.A. No.6455/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Asst. Commissioner of Income Tax-3(1)(2)</b> 6 <sup>th</sup> Floor, Room No.607 Aaykar Bhavan, M.K.Road Churchgate, Mumbai-20	<b>बनाम/ Vs.</b>	<b>ECL Finance Ltd.</b> Edelweiss House CST Road, Kalina Mumbai – 400 098
स्थायीलेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCE-4916-D</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Ravikant S. Pathak - Ld.AR
<b>Revenue by</b>	:	S.Abirama Karthikeyan, Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	02/01/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/01/2019

## आदेश / ORDER

### Per Bench

1. Aforesaid appeals by revenue for different Assessment Years [AY] contest separate orders of first appellate authority. Since common issues are involved, we proceed to dispose-off the same by way of this common order for the sake of convenience and brevity.

### 1. ITA 6457/Mum/2017 : AY 2012-13, M/s Edelcap Securities Ltd.

2.1 Aforesaid appeal by revenue for AY 2012-13 contest the order of Ld. Commissioner of Income Tax (Appeals)-8, Mumbai [CIT(A)], *Appeal No. CIT(A)-8/IT-271/15-16* dated 14/07/2017 *qua* deletion of disallowance u/s 14A for Rs.167.80 Lacs and deletion of provision for *Mark to Market Losses [MTM]* for Rs.349.82 Lacs.



2.2 The assessee being *resident corporate entity*, stated to be engaged in the business of *trading & arbitrage of commodities, securities & derivative instruments*, was assessed for impugned AY u/s 143(3) on 30/03/2015 wherein the income of the assessee was determined at Rs.766.55 Lacs under normal provisions after certain disallowances / adjustments as against revised returned income of Rs.233.82 Lacs filed by the assessee on 31/10/2012.

2.3 During assessment proceedings, it transpired that the assessee claimed deduction on account of *provision for loss on currency futures, commodities futures, equity stock / index future and equity stock / index option* amounting to Rs.353.28 Lacs, the details of which have already been extracted in *para 4.1* of the quantum assessment order. The Ld. AO viewing the same as contingent liability proceeded to disallow the same. The assessee, vide reply dated 12/02/2015, defended the same by submitting that the unrealized gain of Rs.317.73 Lacs were credited to Profit & Loss Account and therefore, corresponding unrealized loss was allowable to the assessee. It was submitted that the aforesaid accounting treatment was in accordance with *Accounting Standard-30: Financial Instruments: Recognition and measurement & Guidance note on accounting for equity index and equity stock futures and options issued by The Institute of Chartered Accountants of India [ICAI]*. However, not convinced, Ld. AO, treating the same as *contingent liability*, disallowed the same.

2.4 The assessee was saddled with another disallowance u/s 14A in view of the fact that it earned exempt dividend income of Rs.50.02 Lacs from *shares / mutual funds* and offered *suo-moto* disallowance against the same for Rs.2.32 Lacs in the return of income. However, Ld. AO, by



applying Rule 8D, worked at aggregate disallowance of Rs.167.80 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.150.49 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.17.30 Lacs. After adjusting *suo-moto* disallowance offered by the assessee, net disallowance thus made worked out to Rs.165.47 Lacs which was added to the income of the assessee.

3. The Ld. CIT(A) deleted both the additions by relying upon its own decision in assessee's own case for AY 2011-12. Aggrieved the revenue is in further appeal before us.

4.1 The Ld. Authorized Representative for Assessee [AR], at the outset, submitted that the stand of first appellate authority *qua* deletion of provision for *MTM* losses in AY 2011-12 has been confirmed by the Tribunal vide *ITA No. 4263/Mum/2016 order dated 09/11/2017* wherein the matter was concluded in the following manner: -

ISSUE NO. 1:-

4. Under this issue the revenue has challenged the deletion of the addition of Rs.5,20,75,140/- made by AO on account of Mark to Market Loss claimed by the assessee in derivative transaction. The Ld. Representative of the revenue has argued that the loss claimed on the basis of the value derivative as on 31st March is merely a notional loss and the actual loss or the profit of such derivative transaction would be crystallized only at the time of settlement of such transaction, therefore, the finding of the CIT(A) on this issue is wrong against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the finding of the CIT(A) in question. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We noticed that the assessee initially claimed the Mark to Market (MTM) provision for amount on derivative instrument which was disallowed by the AO. In appeal, the CIT(A) allowed the claim of the assessee on the ground of the decision of the Hon'ble ITAT in several cases. The CIT(A) has relied upon the following cases:-

1. *Edelweiss Capital Limited Vs. ITO (ITA. No.5324/M/2007)*
2. *Edelweiss Securities ITA No. 4263/mum/2016 A.Y. 2011-12*
3. *DCIT Vs. Edelweiss Securities Limited(ITA 7792/M/2012)*
4. *DCIT Vs. ECL Finance Limited (ITA 7656/M/2011)*
5. *DCIT Vs. Kotak Mahindra Investment Limited(ITA 1502/M/2012)*
6. *Shri Ramesh Kumar Damani Vs. Addll. CIT (ITA 809/M/2009)*
7. *M/s Ekansha Enterprises P. Ltd. Vs. DCIT (ITA 809/M/2012)*
8. *ACIT Vs. Suryakant D. Nissar (ITA 2750/M/2010)*
9. *DCIT Vs. Edelweiss Securities Limited (ITA 5939/M/2011)*

5. The finding of the CIT(A) is hereby to reproduce as under:-

"5.1.1 these grounds pertains to disallowance of provision on Mark to Market on trading of derivative instrument of Rs.5,20,75,140/- by treating it as notional loss. This issue has been



*dealt with under para 4 of assessing officers order. Essential he has treated the same as notional loss for which liability has not crystallized and has held it as non deductible.*

*5.1.2 I find that this is covered issue in favour of the appellant in jurisdictional Mumbai ITAT in the following cases relied upon by the appellant:*

- 1. Edelweiss Capital Limited Vs. ITO (ITA. No.5324/M/2007)*
- 2. Edelweiss Securities Limited Vs. Addll. CIT(ITA 2193/M/2009)*
- 3. DCIT Vs. Edelweiss Securities Limited(ITA 7792/M/2012)*
- 4. DCIT Vs. ECL Finance Limited (ITA 7656/M/2011)*
- 5. DCIT Vs. Kotak Mahindra Investment Limited(ITA 1502/M/2012)*
- 6. Shri Ramesh Kumar Damani Vs. Addll. CIT (ITA 809/M/2009)*
- 7. M/s Ekansha Enterprises P. Ltd. Vs. DCIT (ITA 809/M/2012)*
- 8. ACIT Vs. Suryakant D. Nissar (ITA 2750/M/2010)*
- 9. DCIT Vs. Edelweiss Securities Limited (ITA 5939/M/2011)*

*In view of the direct decisions on the issue from jurisdictional ITAT the disallowance of Rs.5,20,75,140/- made on this account is deleted. These grounds of appeal are allowed.”*

*6. On appraisal of the above said finding, we noticed that the claim of the assessee has duly covered by the assessee's own case in ITA. No.2193/M/2009 in which the claim of the assessee has been allowed. The other law mentioned above and relied upon by the CIT(A) also speaks about allowance by claim of the assessee. Since, the issue in question has duly been covered by the above mentioned cases. Therefore we are of the view that the finding of the CIT(A) is quite correct and is not liable to be interfere with at this appellate stage. Accordingly, this issue is hereby decided in favour of the assessee against the revenue.*

No contrary judgment could be brought on record by the revenue to rebut the same. Respectfully following the same, we confirm the stand of first appellate authority accordingly, this ground stands dismissed.

4.2 So far as the disallowance u/s 14A is concerned, we find that it is undisputed fact that assessee's own funds far exceeded the investments made by the assessee, the details of which have been placed on record. Therefore, in terms of binding decision of Hon'ble Bombay High Court rendered in *CIT Vs. Reliance Utilities & Power Ltd. [313 ITR 340]* & *CIT Vs. HDFC Bank Ltd. [366 ITR 505]*, a presumption was to be drawn in assessee's favor that the investments were made out of interest free funds available with the assessee unless the revenue authorities could prove the nexus of borrowed funds with the investments made by the assessee. Nothing on record suggest such nexus. Therefore, interest disallowance u/r 8D(2)(ii) could not be held to be justified. We order so.



4.3 So far as the expense disallowance is concerned, Ld. AR has placed on record the details of investments which have actually yielded the exempt income during the impugned AY. The average of these investments works out to Rs.340.60 Lacs & 0.5% of the same comes to Rs.1,70,301/- which is less than *suo-moto* disallowance of Rs.2,32,758/- already offered by the assessee. This computation is in line with the decision of *Delhi Tribunal (Special Bench)* rendered in *ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415]* wherein it has been held that only exempt income yielding investments were to be considered to arrive at the said disallowance. Therefore, the additional expense disallowance, as computed by Ld. AO could not be sustained. Therefore, we find no infirmity in the stand of Ld. first appellate authority.

4.4 The appeal of the revenue stands dismissed.

## **2. ITA 6458/Mum/2017 : AY 2012-13, M/s EC Commodities Ltd.**

5.1 Similarly aggrieved by deletion of disallowance u/s 14A as well as deletion of *MTM losses*, the revenue has challenged the order of first appellate authority. The Ld. CIT (A) has deleted the same by following its own decision in assessee's group companies. Facts and circumstances being *pari-materia* the same, respectfully following the binding decision of this Tribunal in assessee's group concerns, we confirm the stand of first appellate authority in deleting the *MTM losses*. This ground stands dismissed.

5.2 The assessee has been saddled with aggregate disallowance u/s 14A read with *Rule 8D* for Rs.18.56 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.17.28 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.1.28 Lacs. No *suo-moto* disallowance has been



offered in view of the fact that no exempt income has been earned by the assessee during impugned AY. The assessee's submissions as extracted in the quantum assessment order reveal that assessee's own funds far exceeded the investment and therefore, no interest disallowance was justified in the absence of nexus of borrowed funds with the investments. So far expenses disallowance is concerned, it is undisputed fact that no exempt income has been earned by the assessee during impugned AY and therefore, no disallowance on this account was warranted in terms of observation of Hon'ble Bombay High Court (Nagpur Bench) rendered in *PCIT Vs. Ballarpur Industries Ltd. [ITA No. 51 of 2016 dated 13/10/2016]*. Respectfully following the same, we confirm the stand of first appellate authority.

5.3 The appeal stands dismissed.

### **3. ITA 6456/Mum/2017 : AY 2011-12, M/s Edelweiss Finance & Investment Ltd.**

6.1 The revenue is similarly aggrieved by deletion of disallowance u/s 14A as well as deletion of *MTM losses* by first appellate authority. The Ld. CIT (A) has deleted both the additions by relying upon its stand in assessee's own case for AY 2011-12. Facts and circumstances being *pari-materia* the same, respectfully following the binding decision of this Tribunal in assessee's own case as well as in the case of group concerns, we confirm the stand of first appellate authority in deleting the *MTM losses*. This ground stands dismissed.

6.2 The assessee has been saddled with aggregate disallowance u/s 14A *read with Rule 8D* for Rs.586.12 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.526.88 Lacs and expense



disallowance u/r 8D(2)(iii) for Rs.59.24 Lacs. The assessee has offered *suo-moto* disallowance of Rs.7.52 Lacs against exempt income of Rs.36,360/-. The assessee's submissions as extracted in the quantum assessment order reveal that assessee's own funds far exceeded the investment and therefore, no interest disallowance was justified in the absence of nexus of borrowed funds with the investments. So far expenses disallowance is concerned, it is found that the assessee had already disallowed a sum of Rs.7.52 Lacs against exempt income of Rs.0.36 Lacs and therefore, no further addition, in this regard was justified. Hence, we confirm the stand of first appellate authority.

6.3 The appeal stands dismissed.

#### **4. ITA 6459/Mum/2017 : AY 2011-12, M/s ECL Finance Ltd.**

7.1 Similarly aggrieved, the revenue is in further appeal before us against the stand of first appellate authority in deleting disallowance u/s 14A as well as *MTM losses*. The Ld. CIT (A) has deleted both the additions by relying upon its stand in assessee's group companies, the details of which has already been given in the impugned order. Facts and circumstances being *pari-materia* the same, respectfully following the binding decision of this Tribunal in assessee's group concerns, we confirm the stand of first appellate authority in deleting the *MTM losses*. This ground stands dismissed.

7.2 The assessee has been saddled with aggregate disallowance u/s 14A read with Rule 8D for Rs.65.45 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.35.64 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.29.80 Lacs. The assessee has offered *suo-moto* disallowance of Rs.4.63 Lacs against exempt income of Rs.14.29 Lacs.



The assessee's submissions as extracted in the quantum assessment order reveal that assessee's own funds far exceeded the investment and therefore, no interest disallowance was justified in the absence of nexus of borrowed funds with the investments. So far expenses disallowance is concerned, it is found that 0.5% of average value of investments which have yielded exempt income during impugned AY works out to Rs.1.96 Lacs as against *suo-moto* disallowance of Rs.4.63 Lacs already offered by the assessee and therefore, no further disallowance was warranted. The stand of first appellate authority stands confirmed.

7.3 The appeal stands dismissed.

**5. ITA 6455/Mum/2017 : AY 2012-13, M/s ECL Finance Ltd.**

8.1 Similarly aggrieved, the revenue is in further appeal before us against the stand of first appellate authority in deleting disallowance u/s 14A as well as *MTM losses*. The Ld. CIT (A) has deleted both the additions by relying upon its stand in assessee's group companies, the details of which has already been given in the impugned order. Facts and circumstances being *pari-materia* the same, respectfully following the binding decision of this Tribunal in assessee's group concerns, we confirm the stand of first appellate authority in deleting the *MTM losses*. This ground stands dismissed.

8.2 The assessee has been saddled with aggregate disallowance u/s 14A *read with Rule 8D* for Rs.395.51 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.253.17 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.142.34 Lacs. The assessee has offered *suo-moto* disallowance of Rs.4.73 Lacs against exempt income of Rs.9.68 Lacs. The assessee's submissions as extracted in the quantum



assessment order reveal that assessee's own funds far exceeded the investment and therefore, no interest disallowance was justified in the absence of nexus of borrowed funds with the investments. So far expenses disallowance is concerned, it is found that the assessee had already offered disallowance of Rs.4.73 Lacs against exempt income of Rs.9.68 Lacs which was more than sufficient, keeping in view overall facts. Therefore, no further disallowance was warranted. The stand of first appellate authority stands confirmed.

8.3 The appeal stands dismissed.

### **Conclusion**

9. All the appeals stand dismissed.

*Order pronounced in the open court on 08<sup>th</sup> January, 2019.*

Sd/-

**(Pawan Singh)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/01/2019  
Sr.PS:- Jaisy Varghese

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellan
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/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.